

Maritime Territorialization, UNCLOS and the Timor Sea Dispute

REBECCA STRATING

In recent years, maritime sovereignty disputes have become highly visible microcosms of broader contests in the Asia-Pacific region. While material factors have provided potential flashpoints for conflict in the maritime domain, these conflicts are also motivated by ideational factors as sovereignty claims link national identity, status and prestige to the defence of maritime possessions. This article examines the way that maritime spaces have become increasingly linked to, and conflated with, state sovereignty in public discourses, a process articulated as “maritime territorialization”. As a case study, this article uses the Timor Sea dispute between the small Southeast Asian state of Timor-Leste and its much larger neighbour Australia over maritime boundaries, territory and oil and gas reserves. It examines the specific maritime territorialization discourses employed by Timor-Leste’s leaders and supporters, and considers some of the broader implications for maritime disputes in the Asia-Pacific region.

Keywords: maritime territorialization, UNCLOS, Timor Sea, international law, maritime disputes.

REBECCA STRATING is a Lecturer in Politics in the Department of Politics and Philosophy, La Trobe University. Postal Address: SS327 Social Sciences Building, La Trobe University Bundoora, Melbourne, VIC 3086, Australia; email: b.strating@latrobe.edu.au.

In recent years, maritime sovereignty disputes have become highly visible microcosms of broader contests in the Asia-Pacific region. Materially, the seas matter because: they constitute significant trading thoroughfares; some seabeds are estimated to hold significant quantities of hydrocarbon resources;¹ they are often located in contested areas; and dwindling fishing stocks affect the livelihoods of coastal communities.² These material factors have provided potential flashpoints for conflict in the maritime domain including territorial disputes over islands and reefs in the South China and East China Seas. Yet, these conflicts are also motivated by ideational factors. Maritime sovereign claims reflect a form of symbolic politics that links national identity, status and prestige to the defence of maritime possessions.

This article examines the way that maritime spaces have become increasingly linked to, and conflated with, state sovereignty in public discourses, a process articulated as “maritime territorialization”.³ Negotiations that led to the 1982 United Nations Convention on the Law of the Sea (UNCLOS) were conducted during three conferences: UNCLOS I from 1956 to 1958; UNCLOS II in 1960; and UNCLOS III from 1973 to 1982.⁴ This article focuses predominantly on the codification of the international law of the sea through the third conference. This conference introduced a layered sovereignty regime that provided new incentives for states to extend the concept of sovereignty seawards, generating new disputes over overlapping jurisdictions and radically transforming and complicating boundary negotiations and entitlements.⁵ UNCLOS is nearly universally applicable, with 168 of the world’s 193 states party to the Convention.⁶ The previous distinctions between the two sets of regimes governing the recognition of “land” and “sea” possessions and entitlements have become increasingly blurred by the sovereignty discourses of states claiming maritime territory since UNCLOS I in 1958.⁷ Particularly in cases involving post-colonial states, sovereignty claims have evolved from being about material resources to ideational “symbolic” politics that link maritime spaces to national identity, and position “sea territory” as necessary for completing sovereignty and independence.

Maritime Southeast Asian states such as the Philippines, Vietnam, Malaysia and Indonesia are prolific players in the contests over territory and maritime jurisdictional rights in areas such as the South China Sea. Less well understood, however, is the dispute between the small Southeast Asian state of Timor-Leste and its much larger neighbour Australia over maritime boundaries and oil and gas

reserves in the Timor Sea. Principally, the Timor Sea constitutes a distinctive kind of dispute from those most well understood in Southeast Asia. Whereas other Southeast Asian disputes often involve claims over territory (e.g. islands, rocks, reefs etc.) and their adjacent maritime zones, the Timor Sea dispute is over maritime boundaries and does not involve territory as it is traditionally conceived. While sovereignty is invoked in most maritime disputes, in this case, there is no dispute over islands. This article uses the Timor Sea dispute as a case study of maritime territorialization. At the heart of this dispute are the oil and gas deposits located in and around the so-called "Timor Gap". The Timor Gap refers to the gap created when Australia and Indonesia negotiated their maritime boundaries in 1972. The Timor Gap is the part of the boundary the two countries could not delineate because East Timor's then colonial power, Portugal, refused to participate.⁸ This article examines the ideational sovereign narratives employed in Timor-Leste's public diplomacy to support the country's claims around maritime boundaries and the lucrative but contested Greater Sunrise, a gas field located between the coastlines of Australia, Timor-Leste and Indonesia that is estimated to contain 5.1 trillion cubic feet of natural gas and 226 million barrels of condensate.⁹

The article examines the specific maritime territorialization discourses employed by Timor-Leste's leaders and supporters. There are three key strands to these sovereignty discourses. The first propagates the notion that Timor-Leste "owns" the maritime territory and resources in the Timor Sea. Popular narratives cast Australia as a thief that is "stealing" Timor-Leste's hydrocarbons and maritime territory in violation of the country's sovereignty.¹⁰ In contrast, Timor-Leste is positioned as a victim that has been unfairly denied its sovereign entitlements, in terms of both rights to permanent maritime boundaries, and as the rightful owner of Greater Sunrise. The second strand is that Timor-Leste's sovereignty is incomplete and its full independence has been denied as a result of the absence of settled maritime boundaries. The implication here is that maritime area is the equivalent of land territory in the conception of what constitutes sovereignty. Stemming from the first two strands, the third dimension presents Australia as an occupier of Timorese sovereign territory. The narratives use the historical legacies of East Timor's 24-year struggle for independence from Indonesia as a way of presenting Australia as the "occupier" of maritime territory that rightfully belongs to Timor-Leste under international law. While these sovereignty narratives only constitute one aspect of Timor-Leste's

broader public diplomacy strategy, they highlight Timor-Leste's efforts to territorialize the sea.

The article concludes by considering the outcomes and implications of Timor-Leste's maritime territorialization strategy. Maritime territorialization has been an effective tool of moral suasion for Timor-Leste as they draw upon Australia's alleged complicity in Indonesia's invasion and occupation of East Timor in December 1975. However, it has been the non-binding United Nations Compulsory Conciliation (UNCC) processes initiated by Timor-Leste under Annex V of UNCLOS that have provided a pathway to compromise between the two states.¹¹ So far, the foreign policy actions of Timor-Leste demonstrate the ways in which these symbolic sovereign claims for possessing maritime boundaries have come to shape its conception of the country's national interests. Maritime sovereignty narratives may ultimately entrap¹² states into pursuing and defending claims in order to appease domestic audiences as these become incorporated into "the mythos of statehood".¹³

Maritime Territorialization and UNCLOS

The purpose of this section is to understand the role of UNCLOS in transforming the concept of territorial sovereignty. According to Edyta Roszko, the term "maritime territorialization" refers to the ways in which states treat the sea as "land", and the activities that states undergo to "perform" sovereignty in territorial seas and islands.¹⁴ In this article, the term is used to describe the ways in which maritime territory has become increasingly linked to state sovereignty, the changes in the jurisdictional status applied to maritime territory and the attendant processes of distributing sovereign entitlements. Territorialization is highlighted in the ways in which the seas are becoming increasingly viewed as analogous to land.

To demonstrate this territorialization, it is useful to understand some of the history of land and sea regimes. In international relations, territorial boundaries have long provided the "framework of independence and security in the political order".¹⁵ Under the Westphalian order, territory was indivisible from statehood: the hallmark of modern states is exclusive sovereignty over defined territory. According to the 1933 Montevideo Convention, a state possesses the following qualities: a permanent population; a defined territory; government; and capacity to enter into relations with the other states.¹⁶ Maritime space, however, beyond the 3 nautical miles

(nm) “cannon-shot rule” was long regarded (albeit not codified) as a global commons under principles developed by the Dutch legal scholar Hugo Grotius, who argued that waters could not be occupied or seized, and therefore could not be exclusively owned as property.¹⁷ The 1958 Conference codified multiple zones of maritime jurisdiction, including the continental shelf claims employed by Australia in its approach to the Timor Sea. The 1982 UNCLOS extended the international law on maritime jurisdiction. Prior to the 1958 Conference, the oceans were viewed as *res communis* (available to all) largely due to the practical difficulties with occupying water, and in establishing exclusive title.¹⁸ The sea was not analogous to land for the purposes of delineating sovereign jurisdictions.

Importantly for the character of maritime disputes in East Asia, a clear distinction was made between land and sea during the period of European colonialism: while the sea remained open to all, it was the lands that came under the rule of colonial authorities.¹⁹ In the post-World War II period, territorialization of nationhood enabled new states to exercise self-determination, as “territory conveys the necessary physical support for these previous colonised ‘nations’ or ‘people’ to achieve formal independence from colonial control”.²⁰ At the same time, however, the various UNCLOS negotiations for determining new rules of the sea were necessitated by the technological advances that were changing the relationships between societies and the seas after World War II.²¹ Advances in technical areas made appropriation and delimitation of water areas possible. Further, as the rich hydrocarbon resources in the seabed became more easily exploitable, states became desirous of maritime territory because of its economic value, and creating titles ensured private companies would be prepared to enter into stable leasing arrangements.

The territorialization of the sea is a relatively recent phenomenon, dating back to the post-World War II era.²² Over time, the concept of freedom of the seas — that is, the seas being beyond the control of one entity — has been increasingly superseded by new normative frameworks, including UNCLOS, that have altered the ways that states and the international community perceive the seas as “territory”. In relation to the East and South China Seas, Alessio Patalano states that UNCLOS provided “previously unavailable ammunition to attribute political value to territorial and border issues... so that each line drawn was seen as a statement to legitimate a nation’s status and sovereign independence”.²³ With regard to the South China Sea, Hui-Yi Tseng argues that post-war maritime territorialization saw Asian states retrofit foreign concepts of sovereignty and

territoriality in local practices.²⁴ Tseng argues that maritime disputes are intrinsically tied to the formation of modern states in Southeast Asia and the search for national prowess and status. In her view, territorialization started as maritime territorial acquisition became deemed “a critical dimension of the realization and vindication of sovereignty of national government”.²⁵ According to an International Law Discussion Group in 2006, “An acre of sea might be worth more than an acre of barren land, especially if there is oil and gas on the subsoil or on the seabed. Therefore boundary marking is now a major task for coast States and relatively few of them have a full set of maritime boundaries.”²⁶ The value of the seabed and water column resources provides material motivations for states to make and defend sovereignty claims.

Yet, it remains dubious whether the two domains of land and maritime are comparable. In 1986, Judge Mohammed Bedjaoui argued that the differences between the two are “manifest and irreducible”, and that the concept of sovereignty (and consequently its resultant rights to territorial integrity) are not relevant to maritime spaces.²⁷ Over recent decades, however, the significance of maritime boundary delimitation has been growing as a consequence of the territorialization of maritime spaces.²⁸ In some literature, it is taken as a given that maritime territory disputes are qualitatively analogous to conventional (land) territorial disputes, despite the legal and practical complexities of determining either sovereign jurisdictions or rights in maritime spaces.²⁹ As Jon D. Carlson et al. suggest, with regard to maritime issues, UNCLOS has broadened the areas of territorial jurisdiction, and fundamentally altered the “exclusive nature” of territorial sovereignty insofar as it has defined “multiple spheres of overlapping rights, responsibilities, and political authority”.³⁰ The differentiated and layered sets of sovereign *rights* that extend out from coastal baselines under UNCLOS is summarized in Table 1.

The UNCLOS regime created distinctions between *sovereignty* and sovereign *rights*, wherein sovereignty refers to jurisdiction and rights refer to entitlements that fall short of “full sovereignty”.³¹ The term “sovereign rights” under UNCLOS denotes the status of rights that are less than sovereignty; control over seabed resources, for instance, does not entail rights over the water column or the airspace above the sea.³² In the layered sovereignty regime under UNCLOS, the seabed is subject to “a special system of law that incorporates some, but not all, of the rules applicable on land”.³³ Yet, the UNCLOS regime fundamentally challenges traditional ideas of sovereignty as encompassing the exclusive exercise of power

Table 1
Sovereign Rights under UNCLOS³⁴

<i>Maritime Zone</i>	<i>Extension Seaward from Baselines</i>	<i>Entitlements</i>
Internal Waters (including historical bays)	Located landward side of baseline	Full sovereign authority
Territorial Waters	12 nm	Set laws, regulate use, exploit resources, police zone. Foreign vessels permitted “innocent passage”.
Contiguous Zone	24 nm (overlaps territorial sea)	Enforce laws on pollution, smuggling, taxation, customs and immigration.
Exclusive Economic Zone	200 nm	Rights over all natural resources in the water column and seabed i.e. fishing. Other states have rights of navigation, overflight and the submarine pipes and cables.
Continental Shelf	Up to 350 nm	Exploit resources in the seabed and subsoil i.e. oil, gas and minerals.

and control within a recognized bounded area. These “layers of sovereign authority” that exist beyond the coastal baselines of states are designed to balance the needs of coastal states with others in the international community.

This balance has given states certain sovereign *rights* without the exclusivity that is typically associated with sovereign territory. The exclusive economic zones (EEZs), for example, coincide with the “high seas” which are still considered *res communis*: “open to all states for unimpeded navigation, fishing, overflight by aircraft, and the laying of cables and pipelines”.³⁵ Sovereignty is most diluted over

the continental shelf claims extended beyond the EEZ.³⁶ In providing differentiated zones of entitlement, UNCLOS has changed the nature of the oceans as a global commons that cannot be possessed. The diminution of the *mare liberum* (free seas) principle has corresponded with the ways in which states have sought control over maritime resources. It could be argued, then, that the codification of UNCLOS and the resultant territorialization of proximate maritime space provide new issues for states to contest.

The Timor Sea Dispute

In both formal and informal narratives of sovereignty, maritime territorialization has manifested in arguments that possession of aquatic “territory” is necessary for the pursuit of independence and the completion of sovereignty. This is particularly evident in the sovereignty discourses employed by Timor-Leste in its dispute against Australia over maritime boundaries and hydrocarbon resources in the Timor Sea. Upon achieving formal independence in 2002, Timor-Leste was one of the poorest and most aid-dependent nations in the world, and its economic viability was contingent upon the hasty exploitation of oil and gas in the Timor Gap, a sea area claimed by both Australia and Timor-Leste (and previously, Indonesia). Australia claimed that “natural prolongation” — the principle that a state’s maritime boundary should extend to the end of its continental shelf — would place a boundary much closer to Timor-Leste’s coastline, in line with a purported continental shelf. This was the dominant international legal principle at the time Australia’s maritime boundaries were drawn with Indonesia in the early 1970s. Timor-Leste, on the other hand, argued that a median line should be drawn between the two states, reflecting contemporary maritime law under UNCLOS.³⁷ Three months before Timor-Leste became independent, Australia excluded the compulsory jurisdictions of the International Court of Justice (ICJ) and the International Tribunal for the Law of the Sea (ITLOS) relating to maritime boundary delimitation.

In light of the disagreement, two treaties were signed and ratified for the purposes of governing resource development in the Timor Gap — the 2002 Timor Sea Treaty and the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) — the latter which placed a moratorium on permanent maritime boundaries until 2057.³⁸ The Timor Sea Treaty established the Joint Petroleum Development Area (JPDA), with Timor-Leste enjoying 90 per cent of

the revenues in a trade-off for Australia attaining rights to process the oil and gas in Darwin. A 2003 unitization agreement located 20.1 per cent of the Greater Sunrise natural gas in the JPDA and 79.9 per cent in Australia's jurisdiction. With the signing of the CMATS, both states agreed to a 50:50 split of revenues generated from the sale of natural gas from the Great Sunrise.

Despite the agreement, Greater Sunrise currently lies undeveloped, as CMATS set aside the issue of how it would be developed. Timor-Leste's ambitious economic plans to develop a petro-chemical processing industry hinge on the capacities of the state to win rights to develop a petroleum export pipeline from Greater Sunrise to the south coast of Timor-Leste, a prospect that the licensee consortium, headed by Woodside Energy, an Australian company, deemed commercially unviable and instead proposed a floating liquefied natural gas (LNG) platform.³⁹ Woodside argued that the pipeline — which would be deeper and thicker than any existing pipeline — in the “unforgiving terrain” of the Timor seabed would be economically and technically too risky.⁴⁰ The Australia government supported Woodside's assessment, and the development of Greater Sunrise was ultimately shelved due to the impasse. Subsequently, Timor-Leste sought to invalidate CMATS through international legal proceedings and push Australia into either agreeing to delineate permanent maritime boundaries, or submit to third-party arbitration, in order to advance its claims and entitlements to all of Greater Sunrise. Timor-Leste's policy thus shifted from accepting a moratorium to actively pursuing the delineation of permanent maritime boundaries.⁴¹

The material aspects in the dispute concern sovereign entitlements to maritime territory that contains significant natural resources that Timor-Leste's economy will rely upon in the future, particularly as the country's national development strategy relies heavily on the export pipeline and the development of an oil processing refinery.⁴² In terms of Timor-Leste's economic viability, oil revenues are central to maintaining the functions of the state as approximately 90 per cent of state revenue is generated from hydrocarbon resources from the JPDA. However, these are expected to have run dry by the early 2020s, and based on current spending trends, the US\$16 billion Petroleum Fund is expected to run out within a decade.⁴³ This makes the resolution of the Timor Sea dispute a pressing matter for Timor-Leste. If Greater Sunrise is not developed within the next decade, then Timor-Leste could again become heavily dependent

on foreign aid. However, as the next section demonstrates, Timor-Leste's interests have become increasingly aligned with ideational and symbolic claims in the sense that maritime boundaries are deemed necessary for completing sovereignty, while the material interests of securing a hasty development plan for Greater Sunrise are downplayed.

Sovereign Narratives and the Territorialization of the Timor Sea

This section examines the sovereignty discourses used by Timorese leaders and supporters in their public diplomacy campaign to demonstrate maritime territorialization. The first strand of the sovereignty discourse relates to the "ownership" of maritime territory. During the negotiations over the Greater Sunrise that led to the CMATS treaty, Timorese representatives claimed that Timor-Leste "owned" Greater Sunrise under international law. For instance, politician and academic Dionisio Babo Soares and "friends" argued that "international law supports Timor-Leste's claim to the... Greater Sunrise gas field, Laminaria-Corralina and Buffalo oilfields".⁴⁴ These claims explicitly relied upon the Opinion in the Matter of East Timor's Maritime Boundaries (the "Lowe" or "Petrotimor" Opinion). The Opinion was commissioned by Petrotimor, a subsidiary of Oceanic Exploration, the oil and gas company that was given original exploration rights in 1974 by the Portuguese administration.⁴⁵ The Petrotimor Opinion allowed political representatives to claim during the negotiations for CMATS that the oil fields belonged to Timor-Leste.

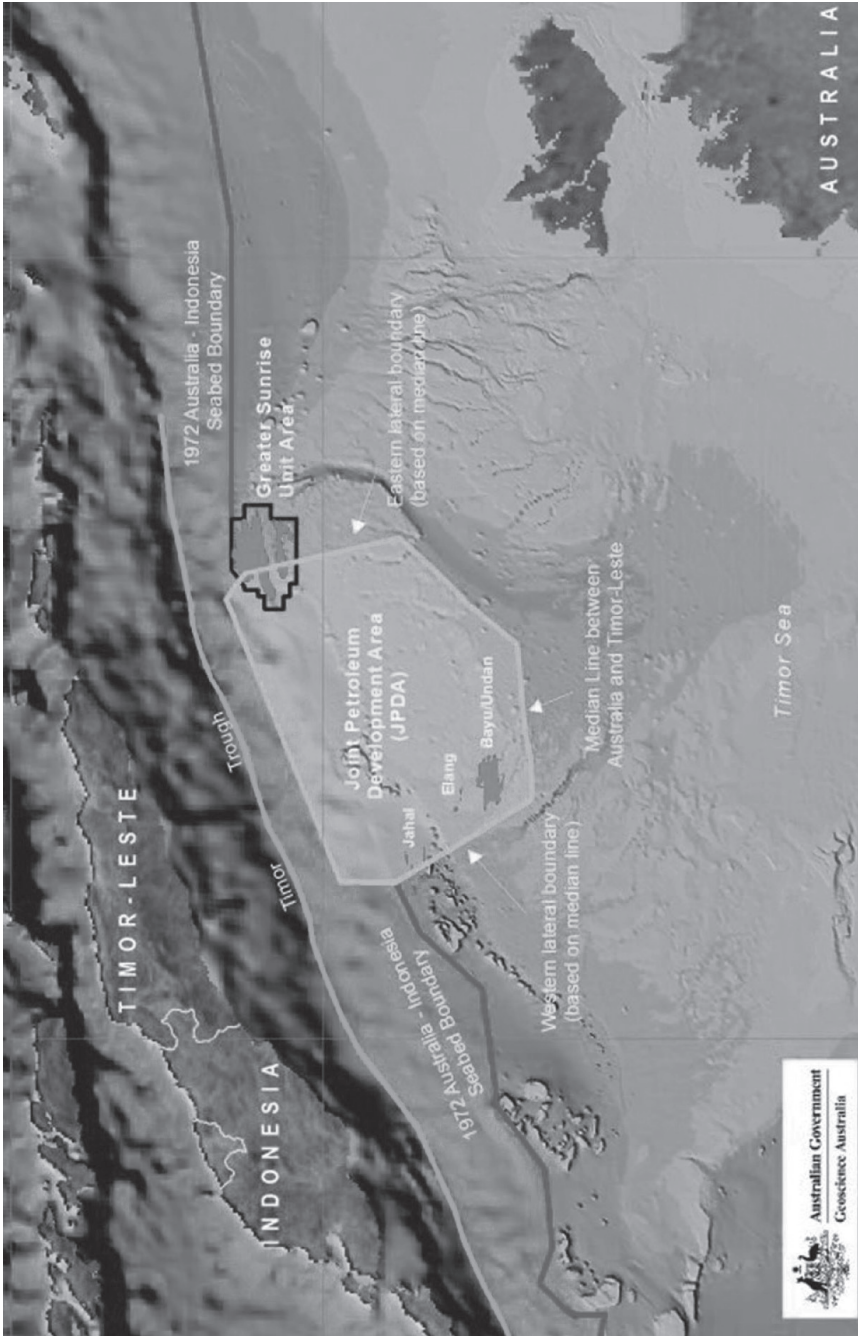
Following the failure to secure a pipeline, Timorese leaders turned to pursuing maritime boundaries, and sovereignty became a central narrative of the public diplomacy campaign. Between 2010 and 2016, the ownership narratives intensified and became less compromising. According to former Prime Minister Rui Maria de Araújo in 2016, "for the people of Timor-Leste, securing permanent maritime boundaries is a continuation of our long struggle for independence and full sovereignty. We ask for no more than what we are entitled to under international law."⁴⁶ The Maritime Boundary Office website presented the argument that "securing maritime boundaries is a matter of sovereignty for the people of Timor-Leste. When permanent maritime boundaries are settled with Australia and Indonesia in accordance with international law, the people of Timor-Leste will achieve sovereign ownership and control

of the maritime areas within those boundaries.”⁴⁷ There are also many examples of the claim that Timor-Leste would own or control Greater Sunrise if boundaries were drawn according to international maritime law. For example, according to the website of the Timor Sea Justice Campaign, a civil society organization, “if boundaries were established in accordance with international law, Greater Sunrise would lie entirely within East Timor’s Exclusive Economic Zone”.⁴⁸ Timor-Leste’s public diplomacy campaign was remarkably successful in propagating the notion that international law established Timor-Leste’s ownership of Greater Sunrise.

The corollary of the ownership argument is that Australia was a “thief” stealing Timor-Leste’s oil and gas.⁴⁹ During the 2010 pipeline negotiations, then Prime Minister Xanana Gusmão argued that Australia “intends to steal our oil and gas in the Timor Sea as they don’t want to bring the pipeline to East Timor... we must be united to defend our wealth in the Timor Sea”.⁵⁰ Australia was accused of having bullied Timor-Leste out of oil and gas revenues by refusing to negotiate permanent boundaries, and Timor-Leste advocates characterized these actions as a “slight on their country’s sovereignty”, a view that has been reinforced by the rhetoric of politicians.⁵¹

The public narratives oversimplified the legal arguments regarding possession of Greater Sunrise. Timor-Leste’s representatives and activists focused on pressuring Australia to agree to a permanent maritime boundary at the horizontal median line, i.e. the line of equidistance between Australia and Timor-Leste. The argument is relatively straightforward: principles of equidistance are paramount in contemporary international law in cases where there are overlapping EEZ claims. As such, Australia’s “natural prolongation” argument, which rests on a continental shelf claim, is legally dubious as the equidistant principle is supported by contemporary treaty law, state practice and international jurisprudence.⁵² However, what the narratives did not declare is that the median line would need to be extended easterly in order for Timor-Leste to take ownership of Greater Sunrise (see Figure 1). The eastern lateral interim line is already drawn according to principles of simple equidistance. Both sides had legal arguments to draw upon to legitimize their claims to Greater Sunrise: Australia for maintaining the lateral equidistant line and Timor-Leste for moving it substantially east.⁵³ In any case, the notion that Timor-Leste *unambiguously* owned Greater Sunrise has been a misinterpretation of international maritime law in

Figure 1
Timor Sea Treaty 2002 Arrangements



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international relations.

There were two distinct sovereign claims made by Timor-Leste's public diplomacy campaign: first, that Timor-Leste had a sovereign right to maritime boundaries; and second, that it had sovereign jurisdiction encompassed by those boundaries. The sovereign right to delineate permanent maritime boundaries dominated the public discourses of the Timorese government. According to Timorese politician Agio Pereira, the "principle" at stake in the dispute incorporates rights to maritime boundaries, sovereignty, consolidation of independence and long term "national interests".⁵⁴ Maritime boundaries are important because sovereignty means "defining exactly where are the sovereign maritime borders of Timor-Leste".⁵⁵ According to the non-governmental organization *La'o Hamutuk*, "many people in Timor-Leste and elsewhere feel that this country's struggle for independence is incomplete until its actual borders (which involve many more issues than oil and gas) are defined".⁵⁶ This is linked to, but distinct from, the claims to jurisdiction over territory. In October 2014, Timor-Leste's national parliament established the Council for Definitive Delimitation of Maritime Boundaries "so that Timor-Leste may effectively enforce its sovereign powers within its national territory".⁵⁷ The parliament's resolution states: "since the country's independence, the people of Timor-Leste have always had the desire to exercise full powers of sovereignty over the national territory and over the maritime area which, according to international law, is under their jurisdiction... the treaties concluded with the Commonwealth of Australia... do not allow the full exercise of the sovereign powers of Timor-Leste, as recognized by international law".⁵⁸

Dominant narratives sought to present the contest as the next phase of Timor-Leste's independence movement, implying that the struggle for sovereign recognition has continued even after it became a sovereign state in May 2002. Timor-Leste's former Prime Minister Rui Maria de Araújo argued that permanent maritime boundaries were:

the final step in realising our full sovereignty as an independent State. From our perspective, this is the second and last phase of our pursuit of the liberation of Timor-Leste. It has been almost fourteen years since the restoration of our independence. We have made tremendous progress. We have made great socio-economic development — we have constructed the foundations of the State, and the construction of the nation. We have moved from a fragile country towards strong development in different areas. But, our struggle for sovereignty will not be over until we have claimed our maritime sovereignty.⁵⁹

The notion that the Timor Sea contest was the final frontier of Timor-Leste's independence campaign was supported by the country's ambassador to Australia, Abel Guterres, who publically declared "it is a critical piece for Timor-Leste in completing its independence and its sovereignty, as each country wishes to do... There is a huge awareness in the country about the maritime border issue. For Timor-Leste this is another struggle for our full independence and sovereignty over land and sea."⁶⁰ Timor-Leste's Maritime Boundary Office website also declares that "achieving permanent maritime boundaries is a national priority for Timor-Leste — it is the final step in Timor-Leste's journey for sovereignty and independence."⁶¹ This presents the issue as being about more than just resources.⁶²

Timor-Leste's narratives draw upon the legacies of the independence movement to present this as a continuation of the country's struggle for independence. According to Ambassador Guterres:

everybody is aware, you need to understand that the current generation of East Timorese are the people that fought the war with Indonesia. We feel sad that it took us 24 years and the loss of a quarter of a million people [to end] this struggle with our northern neighbor. Now we have to carry out another struggle with our southern neighbor because it simply refuses to sit and negotiate the boundary with us. So we have to fight and struggle again, but this time it is intellectual rather than blood and tears.⁶³

The narrative used by Timor-Leste's political representatives seeks to move the debate towards the *symbolic* aspects of sovereignty and away from the *material*. This has been a feature of the debates since Timor-Leste's independence. For instance, Prime Minister Mari Alkatiri argued early in CMATS debates that Timor-Leste's stance was not about money but about sovereignty, reflecting a belief that the symbolic dimensions of the dispute would generate more sympathy than if this were merely a dispute over natural resources.⁶⁴ Former Prime Minister Dr Araújo reiterated this statement by arguing that:

We need to have a really clear message when we talk about the delineation of permanent maritime boundaries — we do not talk about sharing resources — that is a different case.... We need to be clear to everyone that our aim is to delimit our maritime boundaries, not to gain a greater share of the resources —this is not our issue, our issue is to delimit our boundaries as part of the final phase of our sovereignty.⁶⁵

In the “second stage” of the independence movement, the ownership narrative sees Australia replacing Indonesia as the colonial power, denying Timor-Leste its sovereignty. Indeed, some have explicitly argued that Australia is “illegally occupying Timor-Leste’s maritime territory”.⁶⁶ In 2004, the *Lusa* news agency reported then Timorese President Xanana Gusmão comparing Australia’s activities with the Indonesian occupation: “Today, with the ending of occupation by Indonesia, we come up against the wrongful seizure of our natural resources by Australia.”⁶⁷ This quote draws a parallel between Indonesia’s occupation of East Timor and Australia’s actions in the Timor Sea.

Timor-Leste’s symbolic rendering of maritime boundaries represents a particular form of maritime territorialization. Leaders have afforded maritime area the same weight as land territory. As a consequence, Timor-Leste came to view the absence of boundaries as preventing its attainment of full sovereignty. According to Timor-Leste’s logic, a lack of maritime boundaries in the Timor Sea should have also meant that Australia’s sovereignty was “incomplete” or unfulfilled, and yet Australia’s interests were in maintaining its material claims rather than completing its sovereignty. Australia preferred to delay the establishment of boundaries as it did not view permanent maritime boundaries as essential to completing its sovereignty. This example indicates the different versions of sovereignty — and the role of land and the sea in “completing” sovereignty — that have been pursued by Australia and Timor-Leste.

The Timor Sea case study highlights the ways in which maritime space is becoming increasingly tied to concepts of “complete” sovereignty, even though UNCLOS sees these zones as providing rights, not exclusive jurisdiction. Clive Schofield suggests that it is “excessive” to consider states as not fully independent in the absence of comprehensive maritime delimitation.⁶⁸ According to Victor Prescott and Clive Schofield, of the more than 400 potential maritime boundaries in 2005, only around 160 had been negotiated and resolved.⁶⁹ Maritime boundary agreements may be incomplete or deal with only one zone, such as the continental shelf.⁷⁰ Australia and Indonesia, for example, have a maritime boundary agreed upon in the pre-UNCLOS era that is different from the EEZ boundary they negotiated (but did not ratify) in 1997. Importantly, states possess “sovereign rights” over the continental shelf, not “sovereignty”; possession and occupation of water is not possible in the same ways that land can be occupied and possessed.⁷¹

Conceptually, if sovereignty is perceived primarily as an identity status, a key question is whether sovereignty can be partially accorded or incomplete. On the one hand, joint development areas created by treaties such as CMATS are an act of sovereign decision-making. Acting in their sovereign capacities, Timor-Leste's leaders agreed to put on hold boundary delimitations when they signed CMATS. On the other hand, CMATS was delegitimized after Timor-Leste's supporters in 2012 reinvigorated long-standing claims that Australia had planted listening devices in the rooms used by Timor-Leste's negotiators, thereby breaching the "good faith" requirements of treaty-making.⁷² In any case, the claims that Timor-Leste's sovereignty remained incomplete reflected a form of maritime territorialization that effectively linked its historical struggle for independence to the ongoing struggle for maritime boundaries.

Outcomes and Implications

The Timor Sea dispute offers an insight into one of the key limitations of UNCLOS: the legal abilities of states to exclude themselves from certain clauses involving compulsory arbitration. Another key problem in maritime delimitation is with the differing interpretations of what "equidistance" and "equity" means under UNCLOS (although this is slowly being clarified through jurisprudence). States may argue that particular geographical features can alter median lines, producing an "adjusted equidistance" effect in order to meet the "equitable solutions" requirements outlined in UNCLOS.⁷³ In the example of Timor-Leste and Australia, both agree that the eastern lateral line that determines ownership of the lucrative Greater Sunrise field should be based on equidistance, but they had been split on what this precisely looked like in relation to the weight of relevant geographical features in determining an "equitable" delimitation.⁷⁴ The idea that a clear "rules-based maritime order" exists is problematic as the rules permit states extensive latitude to interpret the rules.

Yet, the Timor Sea dispute also offers some positive implications for the UNCLOS-led maritime order, particularly on the use of non-binding, third party conciliation processes. In April 2016, Timor-Leste initiated United Nations Compulsory Conciliation (UNCC) proceedings under Annex V of UNCLOS.⁷⁵ Both states appeared to enter the talks in good faith. During meetings designed to build confidence in Singapore, both states agreed to terminate the CMATS agreement at the beginning of 2017.⁷⁶ As a quid pro quo, Timor-

Leste dropped two international legal proceedings against Australia.⁷⁷ At various stages, the parties have revealed agreements they have reached along the way. The most significant of these revelations was the “Copenhagen Agreement” of August 2017 that announced a breakthrough on maritime boundaries. The press release announced that the parties had agreed to the central elements of maritime boundary delimitation, and had addressed “the legal status of the Greater Sunrise gas field, the establishment of a special regime for Greater Sunrise, a pathway to development of the resource, and the sharing of the resulting revenue”.⁷⁸ This news revealed that Timor-Leste had compromised on its ownership claims of all of Greater Sunrise in order to secure a maritime boundary. While only scheduled to run for a year, the confidential talks continued into 2018 as Australia, Timor-Leste and the venture partners attempted to negotiate a development deal for Greater Sunrise. On 6 March 2018, Australia and Timor-Leste signed a landmark treaty delimiting boundaries, and awarding Timor-Leste either a 70:30 share of revenues if the pipeline goes to Timor-Leste, or 80:20 if the existing processing facilities in Darwin, Australia, are used. Interestingly, the negotiated boundaries themselves do not conform to principles of equidistance set out under UNCLOS. While there were hopes that the UNCC meetings in mid-December 2017 would produce a plan for development, the ongoing nature of these talks confirms that for all the rhetoric about maritime boundaries and sovereignty, the most problematic area of this dispute has been agreeing to a development plan for Greater Sunrise.

One of the most important aspects in understanding the outcomes and success of the UNCC as a foreign policy strategy is the ways in which Australia was hemmed in by its own rhetoric regarding the “rules-based order”. For example, Australia’s Foreign Minister Julie Bishop repeatedly called on Beijing to abide by the Arbitral Tribunal’s ruling on the South China Sea dispute between the Philippines and China which was issued in July 2016.⁷⁹ Australia’s position on the Timor Sea — and its exclusion from compulsory jurisdiction on maritime boundary disputes — opened it up to accusations of hypocrisy, even though bilateral treaties and exclusions of certain UNCLOS clauses are valid under international law. The Timor Sea dispute was a test case for the UNCC proceedings as a non-binding, mediated method of dispute resolution. It appears that the single most important aspect in dispute resolution has been the conciliation process itself, the mentality of both parties to act in “good faith” and the role of the conciliators in mediating between

the parties. Timor-Leste's success in securing boundaries has been due to its strategic use of the UNCC proceedings. Yet, the most important issue for Timor-Leste's sovereignty in a functional sense is the development of the Greater Sunrise gas field. This point has been continually sidelined in the public discussions about the importance of boundaries. At the time of writing, the issue of the pipeline remains unresolved.

In terms of the broader implications for the region, there is an argument that post-colonial Asian states suffer from "incomplete sovereignty", and that maritime issues arise from states that have failed to achieve "full modern sovereignty, and subsequently have never 'recognized' one or more others as full sovereign units without fear of having their own sovereignty encroached upon them".⁸⁰ If seabed claims are viewed as territorial claims, and territorial claims are the basis of armed conflict,⁸¹ then it seems that maritime territorialization may exacerbate or contribute to discord between states. The importance of access to strategic maritime resources provides a further impetus for states to make assertive claims *vis-à-vis* maritime territory.⁸² The desire for expansive territorial seas reflects the vital material security and economic interests of states. Yet contemporary maritime sovereignty disputes reflect not just material interests, but also ideational and domestic political factors. The linking of maritime territory to sovereignty as part of a *symbolic* rendering of disputes — that is, as they become tied up with ideational factors such as history, memory and national identity — can also provoke the involvement of domestic politics. In terms of domestic politics, some states view protecting and preserving maritime sovereign claims as important for enhancing both domestic legitimacy and international status. Provoking nationalist sentiment can mobilize domestic audiences and provide a tool of persuasive statecraft and diplomatic pressure. Yet, depending on the investment of their publics in maritime issues, states may be hemmed in by the need to appease domestic audiences, even if this means preventing cooperation in other spheres of international life.

Conclusion

The "symbolic" or ideational concepts of sovereignty detailed in this article suggest that Timor-Leste's possession of sovereign rights to permanent maritime boundaries and maritime boundary delineation is the final frontier in the country's ongoing struggle for

sovereignty. Securing maritime boundaries was increasingly viewed as essential to “realizing” Timor-Leste’s sovereignty. Sovereignty narratives presented maritime boundaries as essential to completing sovereignty, essentially conflating land and sea domains. Emotive claims were also used by Timor-Leste to deflect from the material drivers of the dispute, as leaders claimed that their interests were not about hydrocarbon revenues but about sovereignty. Furthermore, narratives reflected a belief that Australia was illegally “occupying” Timor-Leste’s territory.⁸³

This reflects a form of maritime territorialization, insofar as sea area was afforded the same weight as land territory in sovereignty discourses. Given that continental shelf rights are not analogous to land territory, the status of the seabeds surrounding littoral states is largely irrelevant to their sovereign status, as sovereignty is an identity marker based on the entity possessing land territory, population, government and recognition. Yet, the lack of maritime boundaries were constructed by Timor-Leste as a missing stage in “completing” sovereignty. In maritime disputes, states have drawn upon conceptions of “symbolic sovereignty” to justify actions and claims. In so doing, national identity is engaged through the discursive reification of in-group/out-group dynamics, and maritime boundaries become a focal point for a broader dispute or historical animosity.

While this case study highlighted the usefulness of the UNCC as a dispute resolution process, with potential implications for other maritime disputes in East Asia, particular visions of sovereignty may also act as a determinant in the likely success of conflict resolution mechanisms under international law. This rendering of maritime boundary disputes as constitutive of sovereignty carries risks of rhetorical entrapment, as states’ leaders can become hemmed in by dominant elite-led or mass-led public diplomacy propagating beliefs that sovereignty disputes cannot be compromised. The use of sovereign narratives to define and promote national interests in the seas shares similar characteristics to disputes in the South China Sea and East China Sea. The ways in which sovereign rhetoric can force leaders into particular decisions as a form of path dependency, and the relationships between foreign policy narratives and domestic public opinion, deserve greater scrutiny given that these constitute potential flashpoints within the changing regional order. In this case, it appears that Timor-Leste ultimately sacrificed its claim that it “owns” all of Greater Sunrise because it remains in negotiations over joint development with Australia and the venture partners.

In other words, the boundaries have not unambiguously provided Timor-Leste with sovereign-like control over the resources. Instead, leaders prioritized the achievement of permanent maritime boundaries as a method for “completing sovereignty”. At this stage, it also remains to be seen whether Timor-Leste’s leaders will be required, or are prepared, to abandon pipeline claims in order to secure a joint development deal. The key question into the future for Timor-Leste’s leaders is how they will be able to negotiate the sovereign rhetoric that they have used to defend their ownership of Greater Sunrise to the domestic public if they are forced to sacrifice the pipeline.

NOTES

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- ³ Edyta Roszko, “Maritime Territorialisation as Performance of Sovereignty and Nationhood in the South China Sea”, *Nations and Nationalism* 21, no. 2 (2015): 235.
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- ¹² On rhetorical entrapment see Dennis Grube, “The Gilded Cage: Rhetorical Path Dependency in Australian Politics”, in *Studies in Australian Political Rhetoric*, edited by John Uhr and Ryan Walter (Canberra: Australian National University Press, 2014); Frank Schimmelfennig, “The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union”, *International Organization* 55, no. 1 (Winter 2001): 47–80.
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- ¹⁴ Roszko, “Maritime Territorialisation”, op. cit., p. 235.
- ¹⁵ Alejandra Torres Camprubí, *Statehood under Water: Challenges of Sea-Level Right to the Continuity of Pacific Island States* (Leiden: Brill, 2016), p. 21.
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