

## THE CONVERSATION

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# Australia's deal with Timor-Leste in peril again over oil and gas

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In April, Australia and Timor-Leste reached agreement on their maritime boundaries in the Timor Sea. This resolved a longstanding source of contention between them.

The potential benefits of this historic breakthrough are now in peril, because the critical issue of how the shared oil and gas of the Timor Sea are to be developed remains in dispute.

### Breakthrough on maritime boundaries

Australia and Timor-Leste's boundary agreement was achieved thanks to a unique dispute resolution process: the United Nations Compulsory Conciliation Commission. The commission was initiated under the United Nations Convention on the Law of the Sea (UNCLOS).

Because both Australia and Timor are parties to UNCLOS, Timor was able to invoke a compulsory conciliation process. It was the first time this has occurred.

Australia was at first reluctant to engage in the UNCC process. It lost its argument that the commission did not have the competence to negotiate the dispute. Australia did then engage with the process in good faith.

Indeed, the success of the UNCC was in large part due to the willingness of both parties to participate in good faith. A series of "confidence building" measures in 2016 helped build trust between the states.

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By January 2017, Australia had agreed to terminate the existing Certain Maritime Agreement on the Timor Sea (CMATS). In return, Timor-Leste dropped two international legal cases it had initiated against Australia.

The process set up a neutral commission to run facilitated negotiations over a year, although sessions ultimately ran from July 2016 to February 2018. While participation in the conciliation was compulsory for the parties, it differed from an arbitration process, such as an international court, because the commission's recommendations could only be non-binding. A crucial aspect of these facilitated negotiations were the discussion papers that allowed both states to think creatively about solving the dispute.

Ultimately, the process succeeded in its primary aim of helping Australia and Timor-Leste to resolve their long-running dispute in the Timor Sea. The breakthrough came in July 2017, when the countries outlined to the commission the points on which they were willing to compromise.

On August 30, an agreement on maritime boundaries, revenue split and an action plan for their engagement in the joint venture was reached. The maritime boundary treaty was signed on April 6 2018.

## **Deadlock over downstream developments**

On May 9 2018, the commission, to little media fanfare, released its report and recommendations on the conciliation.

The report provides valuable insights into the ongoing disputes over development of the Greater Sunrise complex of gas fields located in the Timor Sea – a critical issue for Timor-Leste's future economic security and development.

Australia and Timor-Leste asked the UNCC to extend its mandate to include the development concept for Greater Sunrise. This extended the sessions beyond the initial one-year period.

Despite its significant success in helping the states agree on maritime boundaries in the Timor Sea, the report indicates little progress was made on the question of how Greater Sunrise gas would be processed.

Crucially, Timor-Leste's lead negotiator and newly re-installed prime minister, Xanana Gusmao, has consistently advocated a pipeline to the south coast of Timor-Leste to support the development of a Timorese oil and gas processing hub.

The Sunrise Venture Partners (SVP), led by Woodside, have preferred either a floating platform or, more recently, back-filling an existing processing plant in Darwin. Australia, for its part, describes itself as "pipeline neutral", but supports the decision of the commercial venture partners.

To address this issue, the SVP was invited to participate in the commission process. The report suggests very little progress has been made between the three parties – Australia, Timor-Leste and the SVP – on this dispute.

The commission considered two development concepts, based in Darwin and Timor Leste respectively. According to Gusmao, the pipeline to Timor-Leste is “non-negotiable”. Yet, there is little impartial evidence that this concept would be commercially viable.

In an effort to find a way out of the impasse, the commission employed an independent consultant from a London-based firm, Gaffney, Cline & Associates, to comparatively analyse the two development concepts. The specialist’s assessment, provided in Annexe 27 of the report, said that for a Timorese processing hub to achieve an acceptable return, the Timorese government or another funder would have to subsidise the project to the tune of US\$5.6 billion. This is about four times Timor-Leste’s annual GDP, or more than one-third of its Petroleum Wealth Fund.

A letter from Gusmao leaked to the commission in February 2018 – after the last round of UNCC meetings – accused the commission of lacking impartiality, preferring the Darwin concept to the Timor-Leste concept.

The letter also rejected the comparative analysis provided by the independent expert. It accused the technical expert of not having the “appropriate experience or understanding from working in Timor-Leste” and of having failed to consider the socioeconomic development benefits of the Timorese proposal.

In contrast, the commission’s report noted that Gaffney, Cline & Associates had previously worked for Timor-Leste, but that Australia had not objected to the appointment.

The report suggests that the three parties – Australia, Timor-Leste and the SVP – are no closer to agreement on how to process Greater Sunrise gas.

## **A looming threat to Timor-Leste’s development**

The need to resolve the development issue is increasingly urgent. Timor-Leste is rapidly running out of revenue and development options. Over 90% of its annual budget comes from revenues from oil fields that are expected to be depleted within the next five years. Economically, Timor-Leste does not appear to have a plan B if its strategy for bringing gas to the southern shores of Timor-Leste fails.

Given its precarious situation, one might wonder why Timor-Leste is taking what appears to be a risky approach to this issue, and about what kind of agreements it has sought with other actors or states. In any case, the central element of the Timor Sea dispute seems far from resolved.