

**National Interest Analysis [2018] ATNIA 3  
with attachment on consultation**

**Treaty between Australia and the Democratic Republic of Timor-Leste Establishing  
their Maritime Boundaries in the Timor Sea**

(New York, 6 March 2018)

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# NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

## SUMMARY PAGE

### **Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea**

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#### **Nature and timing of proposed treaty action**

1. The proposed treaty action is the entry into force of the *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea* (the Treaty). The Treaty was signed on 6 March 2018 at the United Nations' headquarters in New York, United States of America.
2. The Treaty will enter into force when Australia and Timor-Leste exchange diplomatic notes confirming that their domestic requirements to give effect to the treaty have been met pursuant to article 13 of the Treaty. The Government aims to fulfil its requirements to bring the Treaty into force following consideration by the Joint Standing Committee on Treaties (JSCOT) and the passage of legislation to implement the Treaty. Australia and Timor-Leste will also implement any necessary transitional arrangements prior to entry into force.
3. The Treaty will replace the *Timor Sea Treaty between the Government of East Timor and the Government of Australia* (the Timor Sea Treaty, Dili, 20 May 2002, [2003] ATS 13) and the *Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields* (the International Unitisation Agreement, Dili, 6 March 2003 [2007] ATS 11). Article 9 of the Treaty confirms the Timor Sea Treaty and the International Unitisation Agreement will terminate when the Treaty enters into force. Timor-Leste issued its intent to terminate the *Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea* (CMATS, Sydney, 12 January 2006, [2007] ATS 12) on 10 January 2017 and CMATs consequently ceased to be in force on 10 April 2017.

#### **Overview and national interest analysis**

4. The Treaty will establish permanent maritime boundaries between Australia and Timor-Leste in the Timor Sea. It will also establish the Greater Sunrise Special Regime for the joint development, exploitation and management of the Sunrise and Troubadour (Greater Sunrise) petroleum deposits. The Treaty also provides for transitional arrangements to provide stability and certainty and ensure companies with investments in the Timor Sea are not disadvantaged. All the elements of the Treaty are inextricably linked and collectively comprise a fair and balanced outcome.

5. The resolution of differences between Australia and Timor-Leste and agreement on permanent maritime boundaries will increase stability and certainty for the Parties, business and investors. Both Australia and Timor-Leste will receive benefits from petroleum activities in the Greater Sunrise Special Regime and in other areas of the Timor Sea.
6. A stable and prosperous Timor-Leste is in Australia's national interest. Permanent boundaries and a pathway to develop the Greater Sunrise fields under the Greater Sunrise Special Regime will support Timor-Leste's economic development by providing additional revenue streams from resource development in the Timor Sea. Finalising permanent boundaries will provide a basis for further strengthening Australia's relationship with Timor-Leste.
7. The Treaty upholds Australia's commitment to international law and reinforces peaceful dispute resolution norms, particularly those contained in the United Nations Convention on the Law of the Sea (UNCLOS). The boundaries to be established under this Treaty do not prejudice Indonesia's interests and will complement Australia's existing maritime boundaries with Indonesia.

#### **Reasons for Australia to take the proposed treaty action**

8. The Treaty was negotiated and agreed under the auspices of the Conciliation Commission, following Timor-Leste's initiation of compulsory conciliation under Article 298 and Annex V of UNCLOS in April 2016.

#### *Permanent maritime boundaries*

9. The Timor Sea Treaty regime, comprising the treaties mentioned in paragraph 3, was a provisional arrangement under UNCLOS allowing the joint development of resources in the Timor Sea pending a final delimitation of permanent maritime boundaries. This regime was consistent with UNCLOS and brought substantial benefits to both States. Nevertheless, the location of maritime boundaries between Australia and Timor-Leste has been a source of tension since before Timor-Leste's independence.
10. The Treaty will establish permanent maritime boundaries that resolve this ongoing concern for both Australia and Timor-Leste. While the Treaty was negotiated consistent with Articles 74(1) and 83(1) of UNCLOS, the settlement contained in this Treaty is based on a mutual accommodation between the Parties without prejudice to their respective legal positions. It represents a negotiated compromise which both countries, and the Conciliation Commission, consider is fair and balanced.
11. In finalising our permanent maritime boundaries, the Treaty marks a new chapter in our bilateral relationship with Timor-Leste, revitalising our friendship and cooperation. Timor-Leste's Chief Negotiator and former President, Xanana Gusmao, said the Treaty "marks the beginning of a new era in Timor-Leste's friendship with Australia" and that it represents "a fair border between our two countries".

### *Upholding international rules and the peaceful settlement of disputes*

12. The Treaty will resolve Australia and Timor-Leste's boundary dispute through the compulsory conciliation dispute settlement process in UNCLOS. This is the first time states have used UNCLOS' compulsory conciliation process and it will serve as an example to the international community.
13. Australia supports UNCLOS and its dispute resolution provisions and encourages all countries to respect the decisions reached through the international legal system. International legal rules and norms such as UNCLOS have brought stability and security, which in turn provide a foundation for trade and development.
14. The Treaty is testament to the way in which international law, in particular UNCLOS, allows countries to resolve disputes peacefully. It is an example of the international rules-based order in action.

### *Providing economic benefits to Australia and Timor-Leste and certainty to business*

15. Permanent boundaries will provide economic benefit to both Parties and allow for continued development of natural resources in the Timor Sea by providing certainty and stability for companies with investments in the Timor Sea.
16. The Treaty recognises that both Australia and Timor-Leste may exercise sovereign rights in respect of the Special Regime Area encompassing the Greater Sunrise gas fields. The Treaty establishes the Greater Sunrise Special Regime for the joint development, exploitation and management of the Greater Sunrise fields for the benefit of both Parties.
17. The Treaty provides that Australia will receive either 20 or 30 percent of the upstream revenue from the Greater Sunrise fields depending on the development option chosen – that is, whether by means of a pipeline to a liquefied natural gas (LNG) processing plant in Australia or Timor-Leste.
18. The Treaty, and the progress made during the conciliation, provide a platform for reaching agreement on the development of the Greater Sunrise fields. The Parties can build on the substantial work done by the Conciliation Commission, including its engagement with the Sunrise Joint Venture, to find an outcome that is commercially viable and delivers substantial benefits to Timor-Leste.
19. The Treaty includes transitional arrangements to provide certainty for affected companies. This is consistent with our obligations under the Timor Sea Treaty and International Unitisation Agreement to provide conditions and terms equivalent and reflects both Parties' interest in ensuring that existing operations continue with minimal impact.

### *Supporting Timor-Leste's economic development*

20. A stable and prosperous Timor-Leste is in Australia's national interest. Australia is Timor-Leste's largest partner in development and security. The Australian Government will provide an estimated \$96.1 million in total development aid to Timor-Leste in 2017-18.

21. Since independence in 2002, Timor-Leste has made considerable socio-economic progress, aided by a fast-growing economy. Timor-Leste aspires to become an upper middle income country by 2030 and has set down a clear development agenda through its Strategic Development Plan 2011-2030. Human development indicators have improved, but challenges remain.
22. Despite the impressive progress since independence, the country's economic challenges are considerable. Timor-Leste's economy is oil-dependent with petroleum revenues accounting for 70 per cent of GDP and almost 90 per cent of total government revenue between 2010 and 2015. The sole producing petroleum field that Timor-Leste currently derives its revenue from, Bayu-Undan, is nearing the end of its producing life.
23. The Treaty will support Timor-Leste's economic development by providing new opportunities for commercial and industrial development. Permanent maritime boundaries will expand Timor-Leste's areas of exclusive maritime jurisdiction, which will lead to additional income for Timor-Leste as further resources are developed. Timor-Leste will receive all future income revenue from the Bayu-Undan gas and condensate field, which will transfer to Timor-Leste's jurisdiction.
24. The development of the Greater Sunrise fields would result in substantial additional revenue to Timor-Leste. The exact benefit to Timor-Leste and Australia will depend on a range of factors including the economics of the project and prevailing market prices for oil and gas.

*Supporting Australia's existing maritime boundaries*

25. The Treaty respects third states' interests and does not prejudice future negotiations between Indonesia and Timor-Leste. The Treaty links our seabed boundary with Timor-Leste to Australia's seabed boundary with Indonesia at defined points on the boundary (points A16 and A17), as described in the *Agreement between the Commonwealth Australia and the Republic of Indonesia on Seabed Boundaries in the Area of the Timor and Arafura Seas* (Jakarta, 10 September 1972, [1973] ATS 32).

**Obligations**

*Permanent maritime boundaries*

26. Articles 2 to 5 establish maritime boundaries between Australia and Timor-Leste in the Timor Sea, which are depicted for illustrative purposes at Annex A of the Treaty.
27. The western and eastern lateral boundaries, running from point TA-1 to TA5 and TA10-TA-13 respectively, are continental shelf (seabed) boundaries only. The water column boundaries in these areas are subject to delimitation between Timor-Leste and Indonesia.
28. The southern boundary, running from TA-5 to TA-10, is both a continental shelf and exclusive economic zone (water column) boundary. The western segment of the southern boundary runs above the median line between Australia and Timor-Leste. The eastern segment of the southern boundary runs along the median line between Australia and Timor-Leste.

29. Under article 3, the eastern and western boundaries can be adjusted in certain circumstances. They are ‘provisional’ only in this sense; they are not ‘provisional’ in the sense meant by Article 83 of UNCLOS. Whether any adjustment occurs depends on the outcome of the delimitation between Indonesia and Timor-Leste, and in particular whether those States delimit their continental shelf boundary to the east and west of points A16 and A17 respectively. Should this occur, the adjustment could only take place after resources in the relevant areas (Greater Sunrise fields in the east, and Laminaria and Corallina oil fields in the west) are commercially depleted, as defined by the Treaty. This ensures boundary adjustments do not impact on existing company rights and operations.
30. Article 6 provides that the Treaty does not prejudice negotiations between Timor-Leste and Indonesia on their maritime boundaries in the Timor Sea. It explicitly protects the rights and freedoms of other states under UNCLOS.
31. Article 8 requires Australia and Timor-Leste to work to reach agreement on how if any resources that straddle the new continental shelf boundary will be exploited and shared.
32. Article 11 affirms the permanence of the Treaty and the maritime boundaries it creates. It also makes clear the interlinked nature of all elements of the Treaty. This reflects the fact that the boundaries and other elements of the treaty were part of a holistic and comprehensive package, facilitated by the Conciliation Commission.

#### *Greater Sunrise Special Regime*

33. Article 7 establishes the Greater Sunrise Special Regime (Special Regime). Within this area, Australia and Timor-Leste jointly exercise their rights as coastal states pursuant to article 77 of UNCLOS, until the Special Regime ceases to be in force. After the Special Regime ceases to be in force, the Parties shall individually exercise their rights as coastal states on the basis of the continental shelf boundary established in article 3 of the Treaty. In other words, the continental shelf boundary in the Special Regime Area only becomes relevant after the Special Regime ceases to be in force.
34. The Parties decided that the Greater Sunrise Special Regime should continue for the life of the Greater Sunrise fields regardless of the outcome of the delimitation between Timor-Leste and Indonesia, and that this was part of the overall fair and balanced outcome. This is reflected in article 7(6) and in the interlinked nature of the Treaty as described in article 11.
35. Annex B of the Treaty establishes a governance and regulatory structure and details the exercise of jurisdiction in the Special Regime Area over matters including customs, immigration, quarantine, security and crime.
36. Article 2 of Annex B specifies that Australia and Timor-Leste both have title to petroleum produced in the area, with upstream government revenue shared either 30:70 or 20:80 in Timor-Leste’s favour, depending on whether the Greater Sunrise fields are developed by means of a pipeline to an LNG processing plant in Timor-Leste or Australia. This differential was designed to reflect the different distribution of downstream economic benefits which may flow from either option.

37. Articles 3 and 4 of Annex B confirm that the fiscal regime and new Production Sharing Contract for the Greater Sunrise fields will reflect both Parties' obligations to provide conditions and terms equivalent to those set out in the International Unitisation Agreement and Timor Sea Treaty.
38. The Designated Authority, a statutory authority of Timor-Leste, will be the day-to-day regulator in the Special Regime Area. Its powers are set out in article 6 of Annex B.
39. Under article 7 of Annex B, a Governance Board, comprising representatives from Australia and Timor-Leste, will exercise oversight over "strategic matters", with decisions to be made by consensus. The Regime includes a Dispute Resolution Committee, an independent body, to break deadlocks that arise on the Governance Board, as set out in article 8 of Annex B.
40. Article 9 of Annex B sets out the process and criteria for approving a Development Plan for the Greater Sunrise fields. The criteria for considering the higher-level development concept for the Greater Sunrise fields, the basic terms on which the fields are to be developed, were set out in the Comprehensive Package Agreement of 30 August 2017 (released by the Conciliation Commission in a press release on 6 March 2018). Article 14 of Annex B sets out the requirements for a local content plan, which is to be included in the Development Plan, reflecting both Parties' commitment to ensure substantial benefits flow to Timor-Leste from the development of the Greater Sunrise fields.
41. Article 10 of Annex B confirms that exclusive jurisdiction over a pipeline from the Special Regime Area will accrue to the Party in whose territory the pipeline lands. This jurisdiction applies both in the Special Regime Area and outside it. There is an obligation on the Party exercising exclusive jurisdiction to cooperate with the Designated Authority to ensure effective management.
42. Articles 15 to 20 of Annex B detail the jurisdictional arrangements which apply in the Special Regime Area.
43. Article 23 of Annex B deals with the duration of the Greater Sunrise Special Regime and confirms that the Special Regime will continue until the Commercial Depletion of the Greater Sunrise fields, as defined in Article 1 of the Treaty.
44. Annex C of the Treaty sets the boundaries of the Special Regime Area. These boundaries are based on the definition of the Unit Area in the International Unitisation Agreement.

*Relationship of the Treaty to previous agreements and transitional arrangements*

45. Articles 9 and 10 of the Treaty reflect the relationship between the Treaty and previous agreements between Australia and Timor-Leste. These provisions recognise the Treaty builds on the agreements the Parties have had in place for many years and is forward-looking in nature.
46. Article 9 of the Treaty confirms that the Timor Sea Treaty and the International Unitisation Agreement will terminate when this Treaty comes into force. Article 10 clarifies that neither Party has a claim for compensation.

47. Annex D provides for transitional arrangements for petroleum activities undertaken in the Timor Sea.
48. Article 1 of Annex D provides that Petroleum Activities conducted under the Timor Sea Treaty and International Unitisation Agreement will continue under conditions or terms equivalent to those in place under those agreements.
49. Article 1 of Annex D provides that Timor-Leste will receive all future upstream revenue derived from Petroleum Activities from the Bayu-Undan Gas Field and Kitan Oil Field. In addition to the general obligation to maintain conditions equivalent, the Parties agreed to grandfather existing arrangements for these fields, recognising they are near to the end of their production life. This includes maintaining the existing fiscal regime for upstream and downstream components for the exploitation of the Bayu-Undan Gas Field (Article 2), and other elements as set out in the Exchange of Correspondence on Bayu-Undan and Kitan Transitional Arrangements.
50. The Treaty resolves an earlier difference of view between the Parties on jurisdiction over the Bayu-Undan pipeline. Article 3 of Annex D confirms that Australia exercises exclusive jurisdiction over the pipeline, including for the purposes of taxation.
51. The Treaty also provides for protection of the rights of the existing titleholder to the Buffalo oil field (under exploration permit WA-523-P), which will transfer to Timorese jurisdiction, as set out in Article 4 of Annex D.

#### *Dispute resolution*

52. Article 12 specifies that Australia or Timor-Leste can submit disputes on the interpretation or application of the Treaty to an arbitral tribunal, where the dispute cannot be resolved by negotiation within six months. Article 12(4) specifies a number of articles for which disputes cannot be submitted to an arbitral tribunal. These include disputes over the articles establishing permanent maritime boundaries, and disputes which fall within the remit of the Dispute Resolution Committee established under article 8 of Annex B.
53. For five years after entry into force of the Treaty, Australia and Timor-Leste can also jointly submit disputes to members of the Conciliation Commission, if the issue cannot be resolved by negotiation within six months, under article 12(1). This provision acknowledges the unique role played by the Conciliation Commission in facilitating the Treaty. Annex E specifies how a dispute can be submitted to an arbitral panel under article 12, as well as the arbitral panel's constitution, registry, and rules of procedure.

#### **Implementation**

54. To implement the Treaty, the new boundaries would be proclaimed under the *Seas and Submerged Lands Act 1973*. The *Petroleum (Timor Sea Treaty) Act 2003* will need to be repealed and replaced with a new Act. Consequential amendments will also be required to a number of acts, including but not limited to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, *Migration Act 1958*, *Customs Act 1901*, *Crimes at Sea Act 2000*, *International Organisations Act 1963*, *Passenger Movement Charge and Collection Act 1978* and *Income Tax Assessment Act 1936*.



55. Cooperation between Australia and Timor-Leste's officials will be required to ensure a smooth transition to the new regime, and complementarity of laws.
56. The Department of Industry, Innovation and Science will appoint a representative to the Greater Sunrise Special Regime's Governance Board to perform the duties and responsibilities specified in Annex B of the Treaty.

### **Costs**

57. The Treaty contemplates that Timor-Leste will receive future upstream revenue from fields that lie within its exclusive jurisdiction, including the Buffalo, Kitan and Bayu-Undan gas fields.
58. Australia will incur no other additional financial costs through this treaty action. The costs of participating in the governance of the Greater Sunrise Special Regime will be absorbed by the Department of Industry, Innovation and Science. These costs largely mirror existing arrangements for the Joint Petroleum Development Area.
59. The Designated Authority responsible for the carrying out the day-to-day regulation and management of petroleum Activities in the Special Regime Area shall be financed from fees collected under the applicable Petroleum Mining Code and the Greater Sunrise Production Sharing Contract.
60. A standard-form Regulation Impact Statement will be prepared prior to implementing legislation being introduced to Parliament.

### **Future treaty action**

61. Under article 11, Australia and Timor-Leste can only amend the Treaty by their express agreement to do so.
62. Adjustments to the continental shelf boundary under article 3 would not require further treaty action but might require further changes to Australian legislation. Article 3 specifies when and how adjustments can be made.
63. Adjustments required to the exclusive economic zone boundary under article 4 would require further treaty action, subject to Australia's treaty-making requirements, as well as changes to Australian legislation. Changes to the exclusive economic zone boundary would depend on the outcome of the delimitation between Timor-Leste and Indonesia.
64. The Treaty requires Australia and Timor-Leste to agree additional arrangements for the Special Regime and to implement transitional arrangements. These arrangements would not require treaty action but may be made binding on the Parties through domestic legislation, executive action, or through contracts with third parties such as the Sunrise Joint Venture. These arrangements would not alter Australia's obligations under the Treaty, but would provide greater detail on how the obligations would be implemented. For example:

- a. Article 2 of Annex D requires the Parties to agree arrangements for cooperation between regulatory authorities in relation to the Bayu-Undan gas field and its decommissioning consistent with existing decommissioning plans.
- b. Article 4 of Annex D requires the Parties to preserve security of title and other rights held by the titleholder of the Buffalo oil field through conditions equivalent, including through entry into a new Production Sharing Contract.
- c. In the Special Regime area:
  - i. Article 3 of Annex B requires the Parties to agree a fiscal regime applicable in the Special Regime with the Sunrise Joint Venture.
  - ii. Article 15 of Annex B requires cooperation and coordination with respect to search and rescue operations and surveillance operations involving special regime installations.
  - iii. Article 16 of Annex B makes clear Australia and Timor-Leste, in exercise of their continental shelf rights, jointly exercise jurisdiction over the subject matters listed. Both Parties have agreed to consult as necessary on the exercise of this jurisdiction.
  - iv. Article 17 of Annex B provides that Australia and TL may adopt arrangements (not agreements) to coordinate the exercise of customs and immigration rights, but does not oblige them to.
  - v. Article 18 of Annex B refers to consultations with a view to reaching agreement before entering into commercial arrangements with the Greater Sunrise Contractor on quarantine.
  - vi. Article 19 of Annex B refers to consultations for swift recognition of international seafarer certifications consistent with domestic laws.
  - vii. Article 20 of Annex B refers to consultations for the purposes of determining the application of criminal laws, and to cooperation for the purposes of enforcement of criminal laws, including the obtaining of evidence and information.

## **Termination**

65. Under article 11, Australia and Timor-Leste have explicitly agreed they cannot unilaterally denounce, withdraw from, or suspend the Treaty. The Treaty may be amended only by express agreement between the Parties.

## **Contact details**

Transnational and Sea Law Branch  
Legal Division  
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## ATTACHMENT ON CONSULTATION

### Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea

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#### Consultation

66. The Treaty was negotiated through a conciliation process under the UN Convention on the Law of the Sea. The conciliation had strict confidentiality requirements and the proceedings, including negotiations on the Treaty, were largely confidential to provide an environment conducive to facilitating the eventual success of the conciliation.
67. Media releases issued by the Permanent Court of Arbitration in The Hague provided regular public updates on progress in the conciliation. This included announcements of in-principle agreement on permanent maritime boundaries on 30 August 2017, a negotiated treaty text agreed on 13 October 2017, the timeframes for domestic approval processes and signature of the Treaty in late 2017 and 2018, as well as a range of conciliation documents released after treaty signing on 6 March 2018.
68. State and Territory Governments were consulted through the Commonwealth-State-Territory Standing Committee on Treaties. State and Territory representatives did not seek further information.
69. During the conciliation, and at the request of the Conciliation Commission, Timor-Leste and Australia consulted with the companies comprising the Sunrise Joint Venture, which holds the two production sharing contracts and two retentions leases to develop the Greater Sunrise gas fields, on the development of Greater Sunrise. Confidential consultations with the Sunrise Joint Venture took place in Brisbane, Melbourne, Singapore, Sydney, and Kuala Lumpur between November 2017 and February 2018.
70. In November 2017, Australia and Timor-Leste jointly wrote to companies holding production sharing contracts in the Joint Petroleum Development Area (JPDA) and offshore petroleum titles in Australia to provide an update on the conciliation process. Companies were invited to provide views, on a confidential basis, regarding future jurisdictional changes in the Timor Sea as a consequence of a permanent maritime boundary. Companies expressed a number of views that contributed to the development of transitional arrangements under Annex D of the Treaty. In February 2018, Australia and Timor-Leste jointly briefed these companies in Perth to provide further information on the Treaty and provide an opportunity for further feedback from the companies.
71. The text of the signed Treaty was published on the Department of Foreign Affairs and Trade's website on 7 March 2018. The Department of Industry, Innovation and Science continues to consult companies with business interests in the Timor Sea in developing the implementing legislation for the Treaty.