



TIMOR-LESTE AND AUSTRALIA: OIL DISPUTE

On 9 January 2017, the Permanent Court of Arbitration issued a trilateral joint statement¹ confirming the termination of the 2006 *Treaty on Certain Maritime Arrangements in the Timor Sea* (or CMATS) between Timor-Leste and the Government of Australia. This statement was issued on behalf of the Conciliation Commission and the Ministries of Foreign Affairs of the Governments of Timor-Leste and Australia.

In the case of Timor-Leste, the Timorese Parliament adopted on 10 January 2017 the Parliament Resolution n° 01/2017, published on 16 January at the Official Gazette, in which it unilaterally terminated the CMATS between the two countries².

¹ The Trilateral Joint Statement is available at <https://pca-cpa.org/en/news/trilateral-joint-statement-pca-case-no-2016-10-conciliation-proceedings-between-the-government-of-the-democratic-republic-of-timor-leste-and-the-government-of-the-commonwealth-of-australia/>.

² Without prejudice to the Government powers to negotiate international treaties, the competence to legislate on the country's borders, including the limits of the territorial waters, of the exclusive economic area and the rights of Timor-Leste to the adjacent area and the continental shelf and the powers to approve and denounce agreements and ratify international treaties and conventions are, under article 95 number 2 paragraphs a) and b) and number 3 paragraph f) of the Constitution, exclusive competences of the National Parliament.

Timor-Leste, a small "half-island" state in Southeast Asia, regained its independence in May 2002 and its economy remains almost completely dependent on revenues from the Timor Sea oil and gas concessions entirely located in the Timor Sea. These concessions are regulated by a set of complex treaties and agreements entered into between both Governments, in particular the Timor Sea Treaty of 20 May 2002³, which established the Joint Petroleum Development Area (JPDA) and the above-mentioned CMATS.

The CMATS is designed to facilitate oil and gas operations outside the JPDA. For the Greater Sunrise field, of which 80% is located outside the JPDA, it establishes a share revenue of 50 per cent between the two countries. In contrast, the Timor Sea Treaty grants to Timor-Leste 90 per cent of the upstream revenues from petroleum fields within the JPDA.

These treaties are linked to the Australia-Timorese dispute on maritime boundaries. This dispute has been pending since 1972 when Portugal, the former colonial power, and Australia failed to reach an agreement on this matter. Instead the two countries established a moratorium (Article 4) on both countries on pursuing, in relation to the other party, their claims to sovereign rights and jurisdiction and maritime boundaries for the period of the Timor Sea Treaty, that is, 50 years.

³ Available at <http://www.anpm.tl/jpda2/>.

However, the CMATS did establish a very significant amendment to the Timor Sea Treaty, by determining in its Article 12 that:

"2. If:

(a) a development plan for the Unit Area has not been approved in accordance with paragraph 1 of Article 12 of the Sunrise IUA⁴ within six years after the date of entry into force of this Treaty; or

(b) production of petroleum from the Unit Area has not commenced within ten years after the date of entry into force of this Treaty;

Either Party may notify the other Party in writing that it wishes to terminate this Treaty, in which case the Treaty shall cease to be in force three calendar months after such notice is given."

Although the two parties engaged in negotiations for several years, an agreement for such development plan for the Unit Area had not been reached by February 2013. By then, neither of the countries was able to terminate the set of Treaties, since, pursuant to Article 22 of the Timor Sea Treaty, as amended by CMATS, the Timor Sea Treaty will remain in force for the duration of the CMATS.

⁴ The Agreement between the Governments of Australia and Timor-Leste relating to the Unitisation of the Sunrise and Troubadour Fields of 6 March 2003.

Further to the existence of separate unilateral rights to terminate the CMATS, at the beginning of 2013, Timor-Leste initiated a formal arbitration procedure against Australia to have the CMATS declared void *ab initio* on the grounds of alleged espionage during the negotiations that had taken place seven years earlier. On 11 April 2016, by way of a “Notification Instituting Conciliation Under Section 2 of Annex V of UNCLOS⁵” Timor-Leste triggered a compulsory conciliation procedure before the Permanent Court of Arbitration seeking to resolve the differences between the two countries over maritime boundaries in the Timor Sea.

It was under this compulsory conciliation procedure that the trilateral joint statement was issued and, importantly, in accordance with this statement, the parties agreed to maintain the Timor Sea Treaty in force in its original pre-CMATS form.

Maintaining the Timor Sea Treaty in force is a positive outcome for the continuity of the petroleum operations in the Timor Sea under a stable framework. However, the termination of CMATS and the enduring dispute over final maritime boundaries between Timor-Leste and Australia bring a high level of uncertainty over future investments. This is particularly so in respect of the Greater Sunrise oil and gas fields, which are of the utmost importance to the country.

This importance stems from the fact that the country’s oil and gas income peaked in 2012 and continues to fall, and that the output of the Bayu-Undan project, Timor-Leste’s only oil-producing field, is expected to stop on or before 2022.

The approximation of Timor-Leste and Australia’s positions that we are witnessing is an important and positive step, not only for the bilateral relations but also for the oil and gas industry and the Timorese economic and financial forecasts. An agreement on the Greater Sunrise fields still seems distant at this stage and Woodside – in partnership with ConocoPhillips, Shell and Osaka Gas – plans currently appear to be on hold.

The existing agreements and granting instruments in place are likely to be unaffected by this recent move and the ongoing discussions and negotiations. However, Timor-Leste and the JPDA are clearly under the scrutiny of the players that have a presence there and those that could be looking at the opportunity to replace any of them or join the parade.

It was under this compulsory conciliation procedure that the trilateral joint statement was issued and, importantly, in accordance with this statement, the parties agreed to maintain the Timor Sea Treaty in force in its original pre-CMATS form.

⁵ United Nations Convention on the Law of the Sea.