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Maritime Boundary Office

TIMOR-LESTE'S MARITIME BOUNDARIES

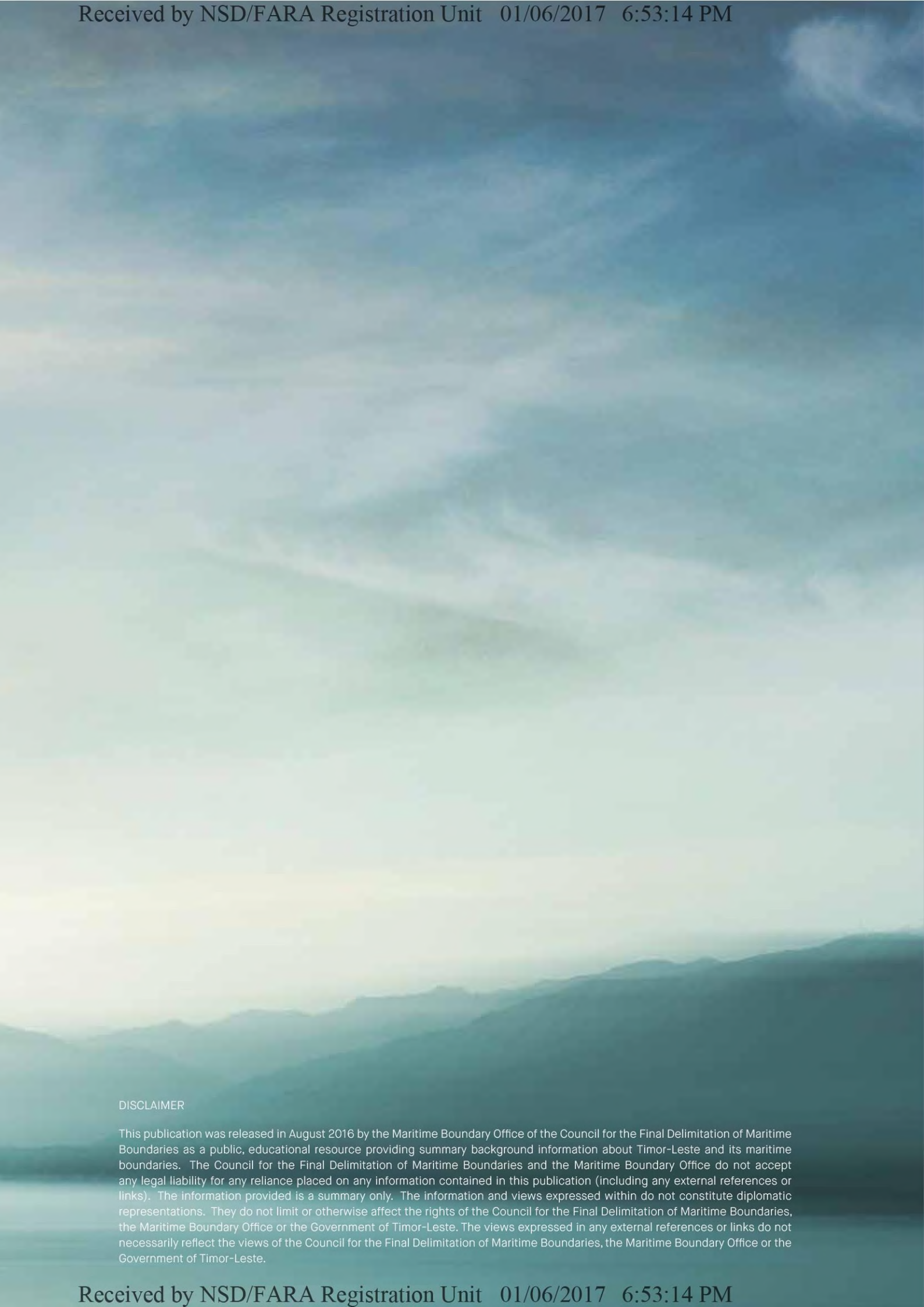
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Maritime Boundary Office
Council for the Final Delimitation of Maritime Boundaries
Government of the Democratic Republic of Timor-Leste

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Message from the Prime Minister



It has been 14 years since the restoration of Timor-Leste's independence. During that time, we have built the foundations of a new State. Emerging from conflict and fragility, we have made remarkable progress to develop our nation and secure our future.

Today, our nation is a resilient and stable democracy. We are building on that foundation and moving forward to create a nation whose people enjoy good health, secure livelihoods and high-quality education.

Yet the Timorese people's struggle for sovereignty is not over.

Timor-Leste's surrounding seas are shared with two big neighbours, Indonesia and Australia. At present, Timor-Leste does not have permanent maritime boundaries with either neighbour. This creates uncertainty as to where our sovereign rights lie.

That uncertainty impacts our security, immigration and fisheries sectors, and the exploration of maritime resources. It is in the interests of regional security for Timor-Leste, Indonesia and Australia to have clear, defined maritime boundaries in accordance with international law.

That is why the Government and people of Timor-Leste have determined that achieving permanent maritime boundaries is a national priority.

There have been some positive steps forward. Timor-Leste is currently in discussions on permanent maritime boundaries with Indonesia, in a spirit of solidarity and friendship.

So far, however, Australia has been unwilling to negotiate maritime boundaries with Timor-Leste. Australia continues to stand by inequitable provisional arrangements that are out of step with international law.

Timor-Leste has recently initiated a compulsory conciliation procedure to bring Australia to the negotiating table and seek a final settlement of the issues between us.

This paper gives the historical context of our struggle for maritime sovereignty, sets out the international law of the sea and includes a comprehensive discussion on our nation's maritime boundaries.

Timor-Leste is seeking nothing more than what we are entitled to under international law. This is the final step in our journey for sovereignty and independence.



H.E. Dr. Rui Maria de Araújo
Prime Minister, Timor-Leste

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Message from the Chief Negotiator



The people of Timor-Leste struggled for 24 years to achieve our independence and self-governance, and to determine our own future. Establishing permanent maritime boundaries according to international law is the final stage of that struggle.

Indonesia has become a good friend of Timor-Leste. Our countries enjoy a close friendship and have become a global model for reconciliation. Indonesia and Timor-Leste are currently in discussions about permanent maritime boundaries. Importantly, both countries have agreed that the position of the boundary should be negotiated in accordance with international law.

Australia is also our good friend and neighbour and has been a partner in the building of our nation. We enjoy close friendships with people across Australia and look to this nation as a leading example of a modern and fair society. Regrettably, however, the Australian Government has engaged in a pattern of behaviour which has undermined our rights and interests in the Timor Sea.

In 2002, on the eve of our restoration of independence, Australia withdrew from the maritime boundary jurisdiction of international courts and tribunals, including the International Court of Justice and the International Tribunal for the Law of the Sea. This means a resolution can only be sought through bilateral negotiations. For more than 10 years, Australia has rejected all of Timor-Leste's invitations to negotiate permanent maritime boundaries. Australia has significant interests in the Timor Sea and its Government seems prepared to tarnish its relationship with a friend to protect those interests.

For the people of Timor-Leste, it does not matter if there are only crabs and crocodiles in the Timor Sea—for us this is a matter of principle and sovereignty. We have struggled for too long, and paid too high a price, to sacrifice our sovereign rights in the sea.

This paper sets out in detail the wrong that is being perpetrated in the Timor Sea and provides a firm and unequivocal statement of Timor-Leste's commitment to an equitable solution under international law.

When permanent maritime boundaries are settled, the seas on Timor-Leste's side will be internationally recognised as belonging to the people of Timor-Leste.

H.E. Kay Rala Xanana Gusmão
Chief Negotiator of the Council for the Final Delimitation of Maritime Boundaries, Timor-Leste

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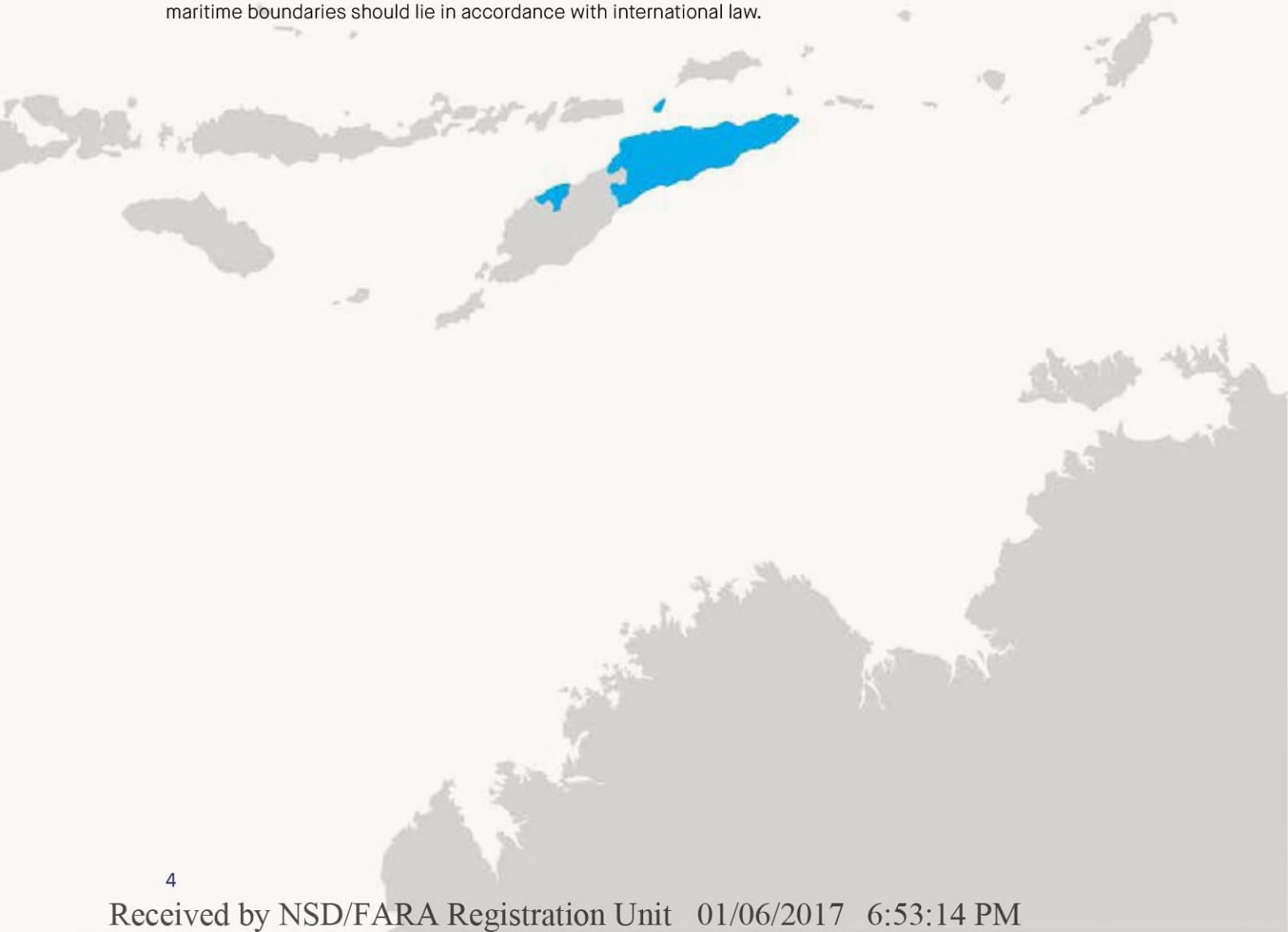
1 OVERVIEW

Timor-Leste is a small, coastal country in Southeast Asia, positioned between two larger maritime neighbours. To the north, west and east lies the Indonesian archipelago. To the south lies the vast Australian continent, about 300 nautical miles across the Timor Sea.

There are currently no permanent maritime boundaries between Timor-Leste and either of its neighbours, Australia and Indonesia.

As a newly independent State, it is a priority for Timor-Leste to complete its sovereignty and establish its borders both on land and in the sea.

This paper tells the story of Timor-Leste's struggle for sovereignty over its seas—from the past to the present, and what it means for the future. To provide clarity and context on this complex issue, the paper summarises the relevant principles of the law of the sea and sets out Timor-Leste's position on where its permanent maritime boundaries should lie in accordance with international law.



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1.1 The Historic Struggle for Independence

The Timorese people have faced many struggles in asserting their sovereignty and the status of their country as an independent nation. It was a Portuguese colony for over 450 years until 28 November 1975, when the leading nationalist movement declared the territory's independence.

Nine days later, Indonesia invaded Timor-Leste. The territory remained under Indonesian control until 1999. Over those 24 years, the Timorese people and Timorese freedom fighters resisted the military occupation and bravely fought for independence. Around one third of the population died from conflict-related causes.

Finally, in August 1999, the dream of freedom from foreign rule was realised. Despite widespread violence before and after the polling day, the people of Timor-Leste voted overwhelmingly in favour of independence in a United Nations-supervised referendum.

On 20 May 2002, Timor-Leste was reborn as an independent and sovereign nation.



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1.2 Timor-Leste's Struggle for Sovereignty Continues: Maritime Boundaries

While Timor-Leste became an independent nation in 2002, its sovereignty is not yet complete. The final frontier of the Timorese struggle lies in the surrounding seas and oceans.

For the island people of Timor-Leste, the oceans are integral to their way of life. The seas have spiritual significance for the Timorese people. By legend, the Timorese are grandchildren of the crocodile—upon its death, its body became the land of Timor, the ridges on its back became the mountains and the valleys, and the oceans its final resting place.

Many Timorese depend on the oceans for their sustenance and livelihoods, by fishing and harvesting marine species, such as tuna, octopus and seaweed. The rich coral reefs and steep underwater cliffs that surround the island are a growing attraction for tourists.

The country is developing its petroleum industry and bringing in investment based on the vast reserves of oil and gas under the seabed off the southern coast. Petroleum activities in the Timor Sea are currently governed by provisional revenue-sharing arrangements with Australia, which closely reflect the terms of a treaty forged by Australia and Indonesia while the Timorese people were suffering under the occupation of a military dictatorship.

Since achieving independence it has become a national priority for Timor-Leste and its people to secure delimitation of permanent maritime boundaries in accordance with international law. Establishing permanent maritime boundaries will allow Timor-Leste to finally map its land and sea borders. Internationally recognised maritime boundaries are important to Timor-Leste as they will provide certainty for customs, security, immigration services, tourism and fisheries. This certainty will also encourage business and investment, including in the petroleum sector, which will add to the resource revenue in the sovereign wealth fund and contribute to building a prosperous future for the Timorese people. The secure and sustainable future of Timor-Leste is at stake.

"For the people of Timor-Leste, securing permanent maritime boundaries is a continuation of our long struggle for independence and full sovereignty."

— Prime Minister, Dr. Rui Maria de Araújo

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1.3 Timor-Leste's Maritime Boundaries under International Law

Timor-Leste is seeking agreement on permanent maritime boundaries with Australia and Indonesia, in accordance with the international law of the sea.

Timor-Leste is not asking for any special treatment or favours, we simply seek what is ours under international law.

Timor-Leste is a strong supporter of international law and the international system established by the community of nations to uphold it. In the brief period since independence, Timor-Leste has already used international courts and tribunals to peacefully resolve disputes with other States and has become a party to many of the major international treaties, including human rights treaties, the Statute of the International Court of Justice and, relevantly, the United Nations Convention on the Law of the Sea (**UNCLOS**).

Timor-Leste seeks no more than what it is entitled to under international law. The fundamental principle under UNCLOS is to reach an agreement under international law which reflects an *equitable solution*. Based on UNCLOS, the standard legal approach to maritime boundary delimitation has been developed in the case law from the International Court of Justice, the International Tribunal for the Law of the Sea, and arbitral tribunals. Under international law, when two neighbouring States are less than 400 nautical miles apart and have competing claims to maritime zones, the starting point is to draw a line that is exactly mid-way between their coasts. The boundary line must then be adjusted for any relevant circumstances and checked for disproportionality, with a view to achieving an equitable result. This is known as the three-stage method or the 'equidistance/relevant circumstances approach'.

Timor-Leste claims its sovereign rights over maritime areas to the north and in the Timor Sea following this standard approach under international law.



Map 1: Timor-Leste's maritime boundaries under international law

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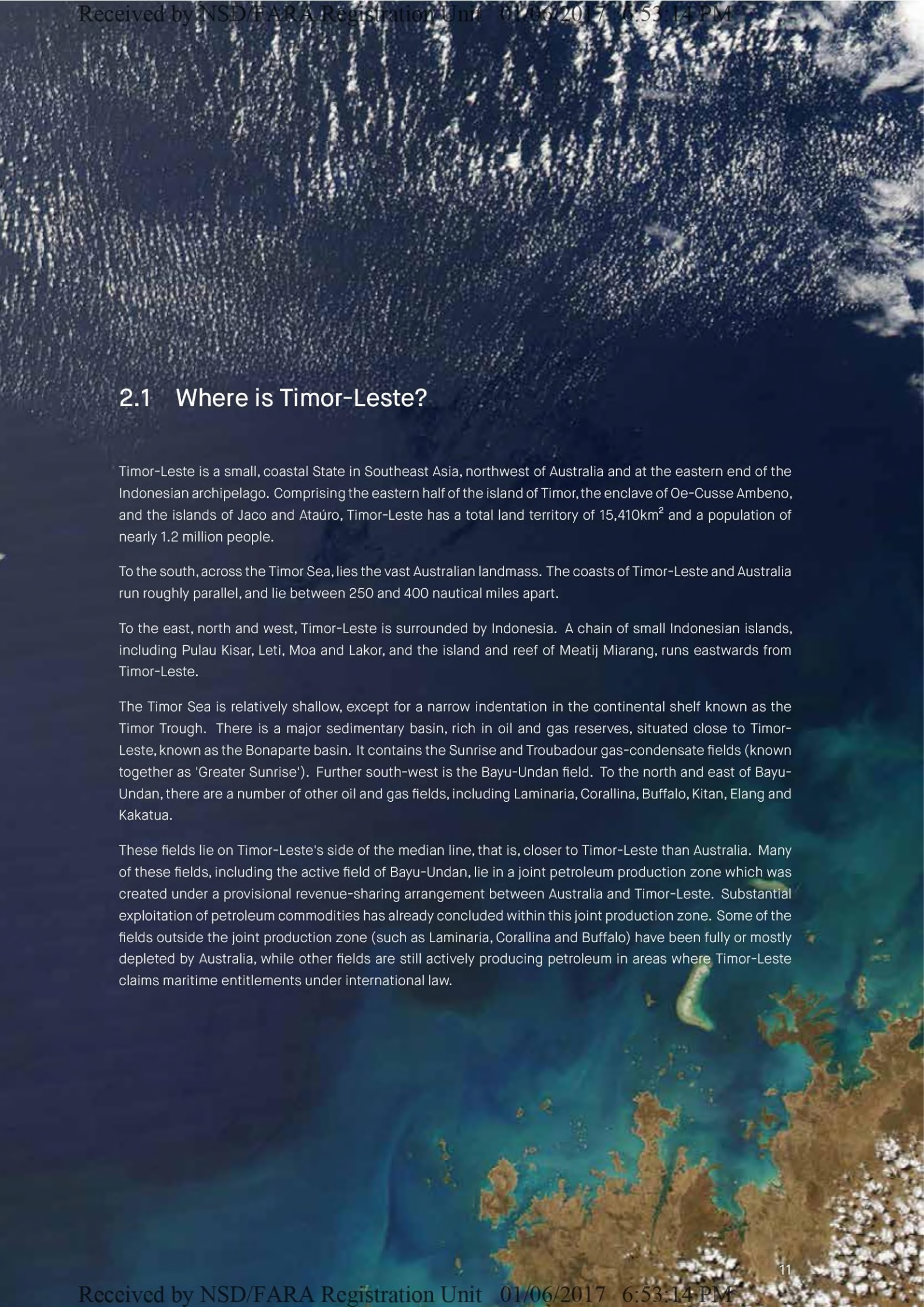
2 HISTORY OF TIMOR-LESTE'S STRUGGLE FOR MARITIME BOUNDARIES



Map 2: Timor-Leste's regional geography

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2.1 Where is Timor-Leste?

Timor-Leste is a small, coastal State in Southeast Asia, northwest of Australia and at the eastern end of the Indonesian archipelago. Comprising the eastern half of the island of Timor, the enclave of Oe-Cusse Ambeno, and the islands of Jaco and Ataúro, Timor-Leste has a total land territory of 15,410km^2 and a population of nearly 1.2 million people.

To the south, across the Timor Sea, lies the vast Australian landmass. The coasts of Timor-Leste and Australia run roughly parallel, and lie between 250 and 400 nautical miles apart.

To the east, north and west, Timor-Leste is surrounded by Indonesia. A chain of small Indonesian islands, including Pulau Kisar, Leti, Moa and Lakor, and the island and reef of Meatij Miarang, runs eastwards from Timor-Leste.

The Timor Sea is relatively shallow, except for a narrow indentation in the continental shelf known as the Timor Trough. There is a major sedimentary basin, rich in oil and gas reserves, situated close to Timor-Leste, known as the Bonaparte basin. It contains the Sunrise and Troubadour gas-condensate fields (known together as 'Greater Sunrise'). Further south-west is the Bayu-Undan field. To the north and east of Bayu-Undan, there are a number of other oil and gas fields, including Laminaria, Corallina, Buffalo, Kitan, Elang and Kakatua.

These fields lie on Timor-Leste's side of the median line, that is, closer to Timor-Leste than Australia. Many of these fields, including the active field of Bayu-Undan, lie in a joint petroleum production zone which was created under a provisional revenue-sharing arrangement between Australia and Timor-Leste. Substantial exploitation of petroleum commodities has already concluded within this joint production zone. Some of the fields outside the joint production zone (such as Laminaria, Corallina and Buffalo) have been fully or mostly depleted by Australia, while other fields are still actively producing petroleum in areas where Timor-Leste claims maritime entitlements under international law.

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2.2 Brief History of a Nation

The Timorese struggle for sovereignty has a long history. Through that history, including nearly five centuries of Portuguese colonialism and nearly a quarter century of national resistance to occupation, the Timorese people have developed a unique world-view and community-based culture, known as *Lisan*. *Lisan* is the sacred expression of culture that connects the Timorese to their ancestors and embeds them within their extended family network. *Lisan* has helped keep Timor-Leste's communities together despite colonialism, invasions, wars and other massive social upheavals. These bonds also keep the nation united behind the mission of completing Timor-Leste's sovereignty over its land and sea.

▶ *Under Portuguese Rule*

Before the arrival of the Europeans, the island of Timor was ruled for centuries by two ancient kingdoms, one in the east and the other in the west. Portuguese missionaries arrived on the island of Timor in 1515 and Portugal later claimed the current territory of Timor-Leste as part of the administrative area of Portugal and called it Portuguese Timor. The Dutch claimed the territory of West Timor, which is now part of Indonesia.

During World War II, Australian, Dutch and British troops landed in neutral Portuguese Timor with a view to using the island as a forward base against the Japanese. In February 1942, as part of its continued push south through Southeast Asia and into Australia, Japanese troops landed in Timor. Strong bonds of friendship were formed between the courageous Australian soldiers and the many Timorese who supported them in the year they fought Japan in a guerrilla-style campaign. After the Australian soldiers departed the island, tens of thousands of Timorese died before the war came to an end. Many Australian veterans have supported Timor-Leste in the years since, believing they owe a debt of honour to the Timorese.

By 1974, Portugal had commenced a process of decolonisation. Indonesia initially had no plans to integrate the former Portuguese Timor, however, Australia, the United States and United Kingdom were in favour of the territory being incorporated into Indonesia. At the time, the United States saw Indonesia as a bastion of anti-communism and Australia had secretly decided that it was inevitable that the territory would become part of Indonesia.

Following a brief period of internal conflict between August and November 1975, on 28 November, the Revolutionary Front for an Independent East Timor (known as **FRETILIN**) declared the territory's independence.

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Under Indonesian Occupation

Nine days later, Indonesia invaded Timor-Leste. Timor-Leste remained under Indonesian control until 1999. During the 24 years of occupation, Timorese freedom fighters ran a national resistance campaign, bravely fought for independence, and many made the ultimate sacrifice for their country. Around 200,000 people, or close to one third of the population, were killed, disappeared or died due to conflict-related hunger and illness during the occupation. In 1979, Australia gave official legal recognition to Indonesia's annexation of the territory of East Timor and remained the only nation to do so.

The Struggle for Independence

In August 1999, the dream of freedom from foreign rule was realised when the Timorese people voted for independence in a United Nations-sponsored referendum.

Withstanding grave threats and acts of violence, 98.6% of the electorate went to the polls. The result was a resounding 78.5% vote in favour of independence. The historic vote was preceded and followed by bloodshed. In the 'scorched earth' operation, almost all of the infrastructure across the country was destroyed. Over a thousand Timorese were killed within a few weeks, and an estimated 230,000 people were forced to flee to the Indonesian territory of West Timor, while approximately 300,000 people left their homes for the nearby hills and forests. Following the outbreak of violence, United Nations peacekeeping troops led by Australia arrived in Timor-Leste and helped to restore peace and stability. Over the next three years, the United Nations Transitional Administration in East Timor (known as UNTAET) administered the country during its transition.

On 20 May 2002, the Democratic Republic of Timor-Leste was reborn as an independent and sovereign nation.

The Transition to Statehood

Emerging from the ashes of war, the new State had to deal with soaring rates of poverty, hunger and malnutrition, while building from scratch its institutions and systems of governance, and essential infrastructure, such as roads, bridges, water and power systems, and health, education and other social services. The social and economic issues that had festered and swelled during the occupation persisted as the country transitioned into nationhood. Today, poverty, malnutrition and poor education continue to pose obstacles on the path to development. With around 60% of the population under 25 years of age, it is a major challenge to ensure Timor-Leste's young population are educated, healthy and productively employed.

Timor-Leste is in the category of "Least Developed Countries" according to the United Nations. Poverty remains persistently high, particularly in rural areas, where the majority of the population lives. Nearly half of the population is estimated to live below the national poverty line of US$0.88 per day.

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Despite these challenges, Timor-Leste has made remarkable progress since independence. The modern State of Timor-Leste is a flourishing democratic republic, which has achieved peace, social stability and the rule of law. As a founding member of the "g7+", a group of States affected by conflict and fragility, Timor-Leste has been sharing these lessons on the challenges of development.

Timor-Leste has enjoyed some of the strongest growth rates in the world. Between 2008 and 2014, the average growth rate was over 10%. Excluding the offshore petroleum sector, Gross Domestic Product is estimated to have grown by 6.2% in 2015. The national sovereign wealth fund, the Petroleum Fund, grew to nearly US$16.5 billion by June 2016. This fund is managed in accordance with international best practice, including strict compliance with the Extractive Industries Transparency Initiative. Every dollar earned from petroleum is accounted for in an open and transparent manner and placed in the Petroleum Fund.

The increase in national wealth has translated into a higher quality of life for the people of Timor-Leste. Since independence, life expectancy at birth has risen to 67.5 years. The Millennium Development Goals were reached for infant and under five mortality rates, as well as for curing cases of tuberculosis and increasing access to antenatal care for pregnant women. Primary school enrolment increased from just over 60% in 2001 to over 90% in 2013. Youth literacy rates have also increased substantially from a base of just 50% in 2001 to around 80% in 2010.

Timor-Leste is implementing its *Strategic Development Plan 2011 - 2030*, which sets out an ambitious but achievable vision for the nation's future—a vision for a stable democracy, with a robust and diversified economy, and a prosperous society with food, shelter and work opportunities for all Timorese citizens. Securing permanent maritime boundaries is a critical step towards achieving Timor-Leste's development goals and vision for the future.

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2.3 Timor-Leste's Struggle for Maritime Boundaries

Against the backdrop of the Timorese people's fight for independence, there has been an ongoing struggle over sovereign rights to the seas surrounding the country and the resources that lie therein.

1960s
Early exploration of oil and gas resources in the Timor Sea

In the early 1960s advances in mining technology allowed offshore drilling and geologists identified sedimentary basins in the Timor Sea as potential sources of petroleum. Seismic tests throughout the 1960s confirmed that there were significant hydrocarbon deposits deep below the Timor Sea. In 1962, Woodside Petroleum and its subsidiary Mid-Eastern Oil, applied for petroleum permits north of the median line in the Timor Sea, including in an area where the Greater Sunrise field was later drilled. Australia unilaterally issued the permits, despite doubts about Australia's right to issue the permits under domestic and international law.

Early 1970s
Australia and Indonesia begin negotiations on seabed boundaries in the Timor Sea

By the early 1970s Australia was aware that both Portuguese Timor and Indonesia disputed Australia's right to issue exploration permits closer to Timor than Australia. In the meantime, an American company called Oceanic Exploration applied to Portugal for a permit up to the median line in the Timor Sea, overlapping some of the permits issued by Australia.

Portugal, which then governed Timor-Leste, made numerous requests to Australia to commence maritime boundary negotiations. Australia rebuffed these approaches.

Instead, in 1971, Australia and Indonesia began negotiations on seabed boundaries, to establish jurisdiction over the seabed and its resources. Portugal was excluded from the negotiations.

9 October 1972
Australia and Indonesia sign a seabed boundary treaty

In May 1971, Australia and Indonesia signed a treaty creating a partial seabed boundary that covered the Arafura Sea and eastern part of the Timor Sea, based on equidistance principles.

In October 1972, they signed a second treaty establishing permanent seabed boundaries in the Timor Sea, which came into force on 8 November 1973. As Portugal did not participate in the negotiations, the seabed boundaries established by that agreement could not address the maritime boundary between Portuguese Timor and Australia, therefore creating what was known as the 'Timor Gap' in the maritime boundary between Australia and Indonesia. The size of the gap was determined by Australia and Indonesia, without Portugal's input.

Portugal continued to dispute Australia's right to issue exploration permits above the median line, causing great uncertainty for some Australian permit-holders in the northern Timor Sea.

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June 1974
Discovery of Greater Sunrise

Less than two years after the signing of the 1972 seabed treaty between Australia and Indonesia, the Australian company Woodside formally discovered the Greater Sunrise oil and gas field in an area north of the median line and just south of the 1972 boundary line.

December 1975
Invasion of Timor-Leste

In December 1975, Indonesia invaded Timor-Leste and occupied the country for the next 24 years. Throughout the 1970s there were numerous United Nations Security Council resolutions declaring Indonesia's occupation illegal and calling on Indonesia to immediately withdraw.

February 1979
Australia and Indonesia begin negotiating on the Timor Sea during the occupation of Timor-Leste

On 14 February 1979, Australia became the first and only country to give official legal recognition of Indonesian sovereignty over Timor-Leste. At the same time, negotiations between Australia and Indonesia officially began to close the 'Timor Gap'. Australia hoped to simply rule a line to join the end points of the existing seabed boundaries with Indonesia, but Indonesia argued for a median line boundary. As Australia and Indonesia could not agree on a maritime boundary, they instead negotiated over the sharing of resources in the Timor Sea.

11 December 1989
Australia and Indonesia sign the Timor Gap Treaty

While Timor-Leste remained under Indonesian military occupation and control, it took 10 years for Australia and Indonesia to agree on a joint arrangement to share revenue from Timor-Leste's offshore resources extracted within a coffin-shaped area in the Timor Sea known as the 'Zone of Cooperation'. This agreement, called the Timor Gap Treaty, transferred substantial benefits to Australia beyond its entitlements under international law. The treaty was signed in 1989 and came into force on 9 February 1991.

22 February 1991
Portugal takes Australia to the International Court of Justice over the Timor Gap Treaty

In 1991, Portugal commenced proceedings against Australia before the International Court of Justice. It claimed, among other things, that Australia had failed to respect the right of the people of East Timor to self-determination by signing the Timor Gap Treaty and by pursuing delimitation negotiations with Indonesia with regards to the continental shelf in the Timor Sea. On 30 June 1995, the case was dismissed on jurisdictional grounds, essentially because the Court could not decide on Indonesia's rights and obligations without Indonesia's consent.

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HISTORY

16 November 1994
UNCLOS comes into force

The leading multilateral treaty on the law of the sea, the United Nations Convention on the Law of the Sea (signed in 1982) came into force in 1994, establishing the rights of each coastal State to an exclusive economic zone up to 200 nautical miles and a continental shelf of at least 200 nautical miles from its baselines. Australia ratified that treaty on 5 October 1994.

14 March 1997
Indonesia and Australia sign an exclusive economic zone treaty

The 1972 treaty between Australia and Indonesia only dealt with the seabed boundary; it did not address sovereign rights over the water column and its resources. In 1997, Australia and Indonesia negotiated a further treaty which delimited the exclusive economic zone, excluding seabed rights. Unlike the 1972 Australia-Indonesia seabed treaty, the exclusive economic zone treaty follows an equidistance line, giving a substantially larger exclusive economic zone to Indonesia.

As this treaty was signed but never ratified, it is currently not in force.

26 October 1999
The Timor Gap Treaty ceases to be in force

In late 1999, a country-wide referendum returned an overwhelming vote for independence, and Timor-Leste began the transition to Statehood.

The Timor Gap Treaty between Australia and Indonesia ceased to have effect when Indonesia formally relinquished control over the territory, and the United Nations Security Council gave responsibility for the administration of the territory to the United Nations Transitional Administration in East Timor.

10 February 2000
Agreements between Australia and the UN transitional administration

In early 2000, Australia and the United Nations transitional administration (acting on behalf of the pre-independence Timor-Leste) signed a document called an Exchange of Notes, which allowed Australia and Timor-Leste to continue petroleum activities in the Timor Sea by extending the legal arrangements under the Timor Gap Treaty.

This was formalised in July 2001 in a Memorandum of Understanding in which Australia and the UN administration agreed that the Timor Sea arrangement would govern exploitation of the Joint Petroleum Development Area upon Timor-Leste's independence.

22 March 2002
Australia's carve-out

Two months before Timor-Leste formally reclaimed its independence, Australia 'carved out' or excluded maritime boundary disputes from the jurisdiction of international courts and binding dispute resolution bodies under UNCLOS, enabling Australia to refuse to allow a court to settle the boundary in accordance with international law.

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20 May 2002

Timor-Leste restores its independence

Timor-Leste and Australia enter into the Timor Sea Treaty

Timor-Leste and Australia sign a Memorandum of Understanding on the Unitisation of Greater Sunrise

On 20 May 2002, Timor-Leste formally restored its independence.

On the very day of its independence, Timor-Leste signed the Timor Sea Treaty with Australia. The Timor Sea Treaty set up a provisional (temporary) arrangement to govern the exploitation of oil and gas resources in the Joint Petroleum Development Area, pending final delimitation of maritime boundaries consistent with international law.

On the same day, Australia and Timor-Leste signed a Memorandum of Understanding concerning an International Unitisation Agreement for the Greater Sunrise field. A unitisation agreement was required because the Greater Sunrise field straddled the eastern lateral side of the Joint Petroleum Development Area which meant the parties had to agree how the field would be jointly exploited.

The Timor Sea Treaty was ratified by Timor-Leste on 17 December 2002, and entered into force on 2 April 2003. It is taken to have effect from the date of signature, 20 May 2002.

23 July 2002

Timor-Leste passes legislation on its maritime rights

Shortly after independence, Timor-Leste passed *Law No. 7/2002 on Maritime Boundaries of the Territory of the Democratic Republic of Timor-Leste*, laying claim to a 200 nautical mile exclusive economic zone from its coastal baseline, as well as to other rights under UNCLOS. The law took effect from 20 May 2002.

6 March 2003

Timor-Leste and Australia sign the Unitisation Agreement

Australia and Timor-Leste signed an agreement to unitise Greater Sunrise in early 2003. This agreement was not ratified and did not come into force until 23 February 2007, along with the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (**CMATS**) (see following page).

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19 April 2004

CMATS negotiations commence

Australia allegedly spies on Timor-Leste's negotiating team

In April 2004, Timor-Leste and Australia commenced negotiations on a maritime boundary. Timor-Leste argued that the sides of the Joint Petroleum Development Area did not reflect international law as the boundary should be the median line and the lateral boundaries should lie further west and east. Australia offered billions of dollars in compensation for Greater Sunrise but Timor-Leste declined. Australia then refused to negotiate a maritime boundary and considered only a provisional resource-sharing arrangement in the Timor Sea.

It was during the negotiations of this treaty that Australia allegedly bugged the Timor-Leste Government offices in Dili and spied on the Timor-Leste negotiation team. Timor-Leste was unaware of this espionage operation until the Government was approached with evidence several years later.

12 January 2006

Timor-Leste and Australia sign the CMATS treaty

The talks ended with the 2006 CMATS treaty, which established a new, temporary resource-sharing arrangement. This treaty amended the Timor Sea Treaty to apportion Timor-Leste a greater share of the revenue from Greater Sunrise but contained a moratorium on 'asserting, pursuing or furthering' a permanent maritime boundary for the next 50 years.

It also contained a provision that CMATS, and by extension the Timor Sea Treaty, could be terminated by either State if a development plan for Greater Sunrise had not been approved within six years after the entry into force of CMATS. This deadline passed on 24 February 2013.

February 2006

Gas production and construction of a pipeline to Darwin

The most lucrative field in the Joint Petroleum Development Area is Bayu-Undan, discovered in 1995, which was estimated to hold around 400 million barrels of condensate and 3.4 trillion cubic feet of gas. Condensate production commenced in 2004 and gas production commenced two years later. A 500 kilometre subsea pipeline from Bayu-Undan to Darwin, Australia, was completed in 2006. The Bayu-Undan field is still actively producing.

Other oil and gas fields, such as Kitan, were discovered later within the Joint Petroleum Development Area. These fields have now been mostly depleted.

2008

Growth of Timor-Leste's Petroleum Fund

Timor-Leste's share of the revenue from these extractive activities has been invested in a sovereign wealth fund since 2005. The Timor-Leste Petroleum Fund ensures that the country's resource wealth is saved for future generations, while also enabling critical Government spending on roads, hospitals and schools every year. By 2008, due to its conservative investment mandate (which at the time involved only investing in U.S. Treasury Bonds), the Fund was one of the most successful sovereign wealth funds in the world.

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Source: International Court of Justice

1 July 2010
Timor-Leste gains international recognition of its resource governance and transparency standards

With the increasing resource activities in the Timor Sea, Timor-Leste developed its national institutions and policies on resource governance. In 2010, Timor-Leste became the first nation in Southeast Asia, and one of the first in the world, to be recognised as compliant with the Extractive Industries Transparency Initiative. The initiative is a respected global standard to promote open and accountable management of natural resources.

July 2011
Timor-Leste releases its Strategic Development Plan

In 2011, the Timor-Leste Government set out its developmental priorities and long-term vision for the country by publishing a *Strategic Development Plan 2011 - 2030*. The plan aims to develop Timor-Leste's key industries, including the petroleum sector, over the next two decades. The plan, which continues to be implemented, sets Timor-Leste on the path to becoming a strong, stable and prosperous nation.

12 December 2012
Timor-Leste declares that CMATS is invalid following allegations of espionage by Australia

Several years after CMATS was agreed, Timor-Leste received information from a former Australian intelligence officer concerning the illegal bugging of Timor-Leste's negotiating team during the treaty negotiations. On this basis, Timor-Leste advised Australia that it considers CMATS to be null and void and that the Timor Sea Treaty continued to operate, unamended by CMATS.

23 April 2013
Timor-Leste commences arbitration under the Timor Sea Treaty

Timor-Leste then commenced arbitration proceedings against Australia at the Permanent Court of Arbitration in The Hague, under the Timor Sea Treaty.

3 December 2013
Australian intelligence agency seizes Timor-Leste's legal documents and data

While those proceedings were underway, the night before the hearing at The Hague, on 3 December 2013, Australian security intelligence officers raided the offices of one of Timor-Leste's lawyers in Canberra and seized documents and data belonging to Timor-Leste. The documents contained internal legal advice. Despite Timor-Leste's requests, the Australian Government refused to return these materials. Timor-Leste promptly commenced proceedings in the International Court of Justice seeking, among other things, a declaration that the seizure and detention of such materials was unlawful.

3 March 2014
Historic decision of the International Court of Justice in Timor-Leste's favour

In March 2014, the International Court of Justice handed down an interim decision on the Canberra raids that ordered Australia to seal the seized documents and data and to keep them sealed until the Court's final decision. The Court also directed, by 15 votes to one, that *"Australia shall not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the [espionage arbitration], with any future bilateral negotiations concerning maritime delimitation, or with any other related procedure between the two States."* The only dissent was by the Australian-appointed ad hoc Judge to the Court.

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1 September 2014
Both legal cases adjourned

In September 2014, at Australia's request, Timor-Leste agreed to suspend both the espionage arbitration and document seizure case, so that the parties could pursue negotiations and attempt to settle the cases.

Formal consultations between the parties were conducted from October 2014 to January 2015. Throughout these consultations, Australia refused to discuss the issue at the heart of the difference: permanent maritime boundaries. Timor-Leste proposed a form of mediation to bring third party assistance to help resolve the dispute. However, no agreement was reached.

12 May 2015
Australia returns seized documents

More than one year after the seizure of Timor-Leste's legal documents and data, Australia returned the seized materials to Timor-Leste.

11 June 2015
International Court of Justice case discontinued

Following the historic decision of the International Court of Justice in Timor-Leste's favour and the return of seized documents and data, Timor-Leste decided to discontinue the case and the matter was removed from the Court's list on 11 June 2015. At the same time, Timor-Leste indicated its intention to reactivate the espionage arbitration.

Australia remains unwilling to engage in discussions on a permanent maritime boundary with Timor-Leste.

26 August 2015
Indonesia and Timor-Leste agree to commence maritime boundary talks

Significant progress had been made with Timor-Leste's other maritime neighbour, Indonesia. In August 2015, during a State Visit, the President of Indonesia, H.E. President Joko Widodo and the President of Timor-Leste, H.E. Taur Matan Ruak, discussed opportunities for bilateral cooperation including on maritime boundaries.

Later, during an Official Visit of Timor-Leste Prime Minister Dr. Rui Maria de Araújo to Indonesia it was agreed with the Indonesian President that the two States would commence permanent maritime boundary negotiations.

18 September 2015
Bilateral maritime boundary talks commence between Timor-Leste and Indonesia

Timor-Leste began maritime boundary discussions with Indonesia in September 2015. The first consultation meeting was held in Dili in September and the second meeting was in Surabaya in October 2015.

16 March 2016
The Timor-Leste Government strengthens its laws and institutions to take forward the maritime boundary agenda

In early 2015, the Government of Timor-Leste passed a law establishing new institutions to take forward its maritime boundary agenda, in particular, the Council for the Final Delimitation of Maritime Boundaries. The Maritime Boundary Office functions as the operational arm of the Council. H.E. Xanana Gusmão, one of the founding fathers of the modern nation of Timor-Leste, was appointed as the Chief Negotiator. The role of these institutions and leadership structures has been strengthened in the latest law passed by Parliament in March 2016, which reflects the importance of this issue for the nation.

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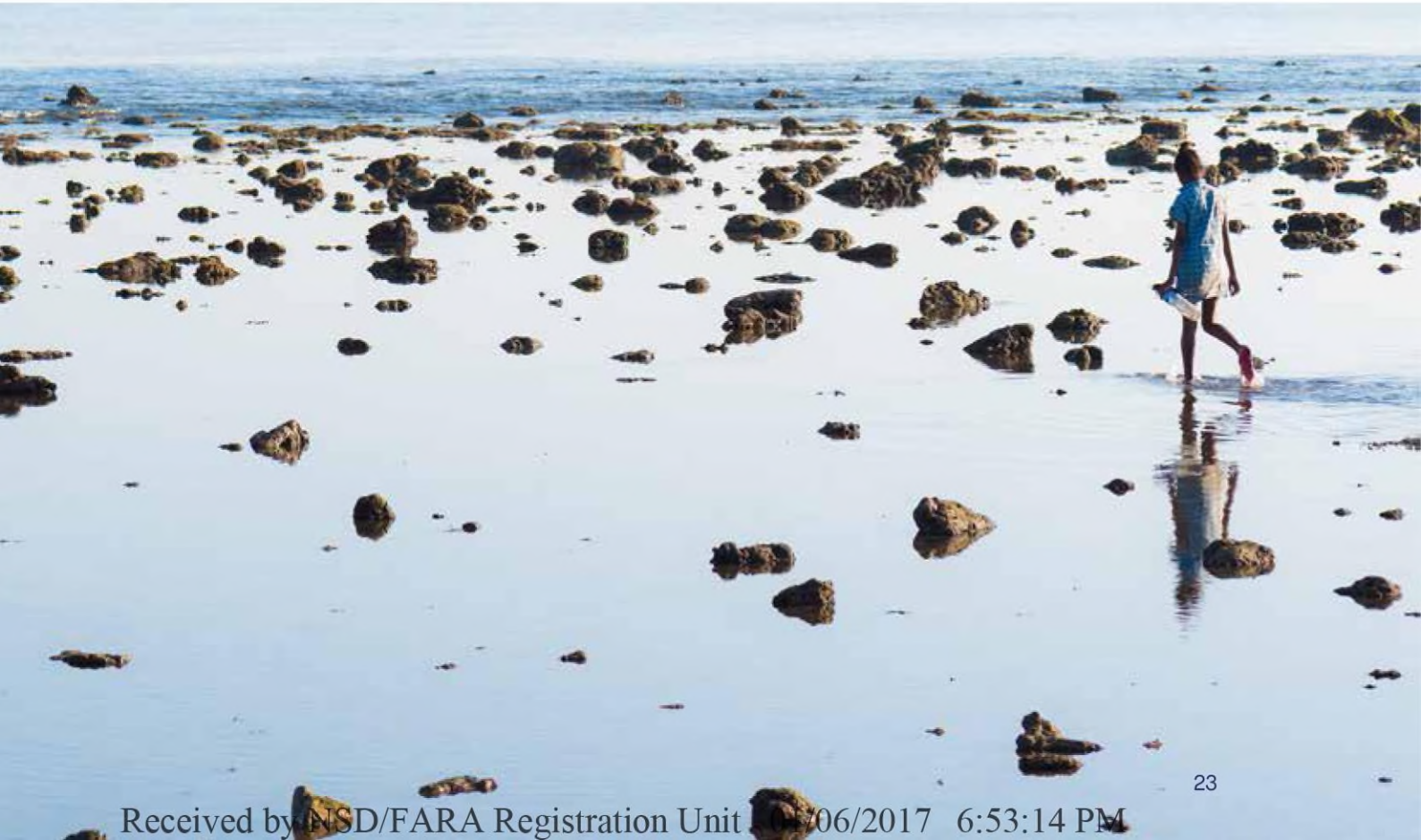
To the present

Timor-Leste commences compulsory conciliation with Australia

While maritime boundary talks with Indonesia continue, Australia has repeatedly refused to engage on the issue. On 26 February 2016, and again on 3 August 2016, the new Australian Prime Minister Malcolm Turnbull declined the Timor-Leste Prime Minister's invitation to commence talks.

On 11 April 2016, Timor-Leste exercised its right to institute compulsory conciliation with Australia under UNCLOS. An independent panel of five conciliators, known as the Conciliation Commission, was constituted on 25 June. The parties met before the Commission at The Hague on 28 July 2016 to discuss procedural issues.

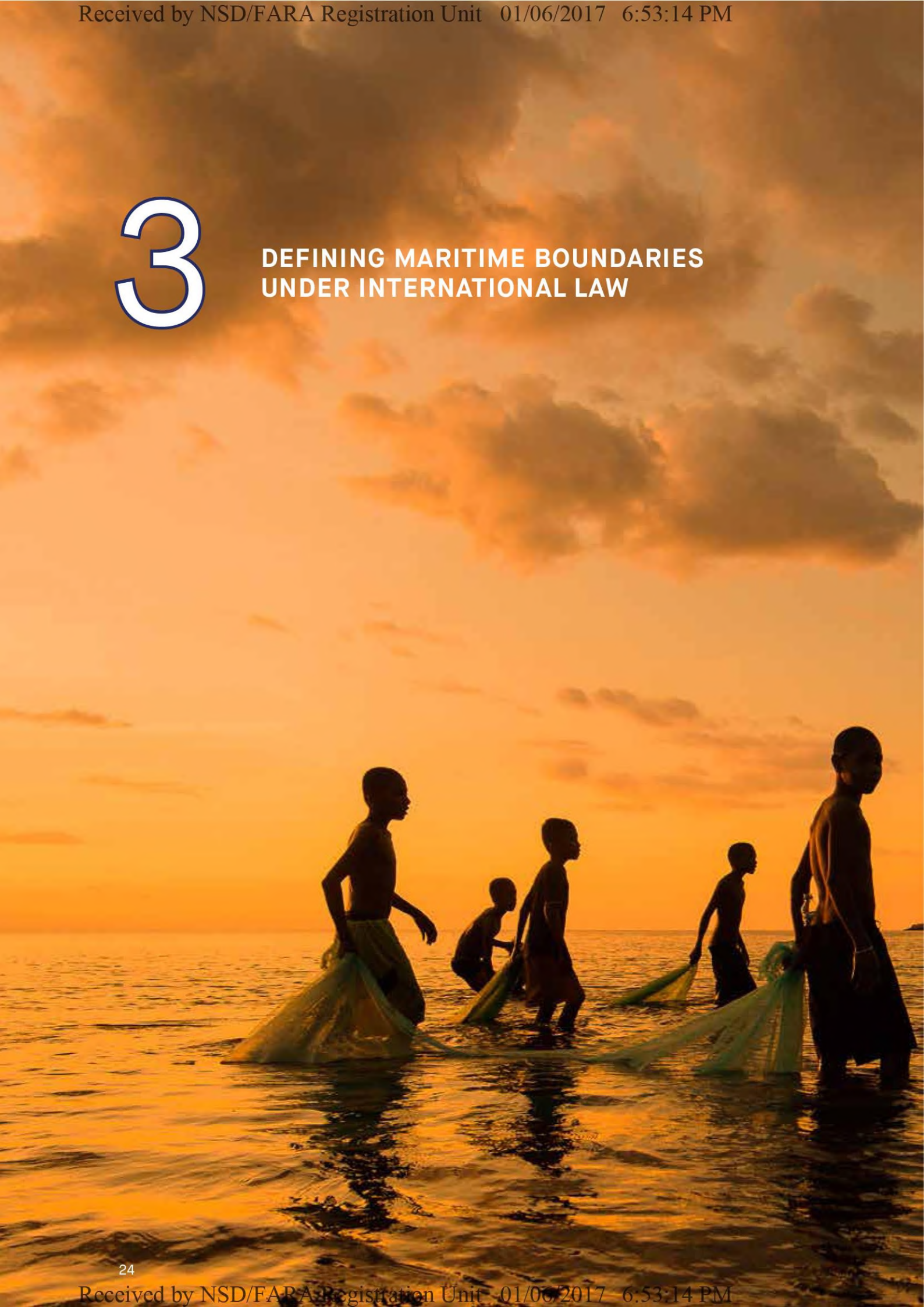
The Commission will hear the parties' views and seek to forge an agreement between them on the issues in dispute. If no agreement is reached within a year, Australia and Timor-Leste will be required to negotiate in good faith on the basis of a report prepared by the Commission, and seek to facilitate an agreement between them on maritime boundaries.



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3 DEFINING MARITIME BOUNDARIES UNDER INTERNATIONAL LAW



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3.1 International Law of the Sea

It is international law, not domestic law, which governs State-to-State relations concerning the seas that lie between them. The law of the sea encompasses internationally agreed rules and principles relating to the ownership, exploration, use, exploitation and protection of the sea and its resources. International law recognises the sovereign rights of coastal States over their surrounding seas, including States' rights to exploit resources in the water column, seabed and subsoil. With these rights comes the responsibility of each coastal State to look after its seas, including through the conservation of living resources in its exclusive economic zone. States also have the duty to define or 'delimit' their maritime boundaries (the limits of their maritime zones). Where States have competing or overlapping claims, they must reach agreement on the position of maritime boundaries between their respective seas on the basis of international law.

Timor-Leste is committed to upholding international law. All States must in good faith fulfil their obligations under international law and respect the legal rights of other States. All States, however big or small, are equal under international law and before international courts. As such, Timor-Leste does not expect special treatment, only equal treatment, as it negotiates maritime boundaries with its larger neighbours.

"In our increasingly chaotic world, we believe that the maintenance and development of international law is the basis for peace, harmony and a just world order."

— Prime Minister, Dr. Rui Maria de Araújo



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Early Development of the Law of the Sea

The law of the sea has evolved over centuries. From the 15th century, the question of 'who owns the sea' was increasingly an issue, as the oceans became a battleground between seafaring States with strategic, military and commercial interests. At the turn of the 17th century, the Dutch jurist Hugo Grotius developed the doctrine of the 'freedom of the seas'. At the same time, the English scholar John Selden developed a theory that States may have exclusive claims to maritime areas. Modern law of the sea reflects the tension between these two approaches.

From the late 1930s, with advances in mining technology such as under-sea drilling, which facilitated access to seabed resources, there was growing interest in asserting claims to maritime jurisdiction beyond the territorial sea.

In 1945, United States President Harry Truman made a proclamation which brought the issue of maritime entitlements between States into focus. The Truman Proclamation claimed that all resources on the United States' continental shelf (that is, the seabed and subsoil extending from its land mass) belonged to the United States. Other coastal States made similar claims, including Australia in 1953. Such claims were based on the 'natural prolongation' principle; that is, that maritime boundaries should generally be drawn where a coastal State's continental shelf naturally ends.

In 1958, at the First United Nations Conference on the Law of the Sea in Geneva, the international community produced four treaties related to maritime issues. Notable amongst these treaties was the 1958 Convention on the Continental Shelf, which stated in Article 6 that neighbouring States should negotiate agreement on their continental shelf boundary, and that:

> *"...[i]n the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured."*

Despite these Geneva Conventions, there remained a lack of clarity on the key questions of who owned the sea, how States could use it, and how maritime boundaries should be drawn where States had competing claims. Some States drew maritime boundaries a certain distance from their coastlines. Others focused on the geology of the seabed as a key factor in determining where their boundaries would lie.

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3.2 The United Nations Convention on the Law of the Sea

The first, truly global treaty on law of the sea – the 1982 United Nations Convention on the Law of the Sea (**UNCLOS**) – addressed these questions and codified the law in this area. Adopted in 1982 and in force since 1994, UNCLOS is the leading multilateral treaty on the law of the sea. Timor-Leste, Australia and Indonesia are all parties to UNCLOS. It is one of the most widely signed and ratified treaties in history, with 168 State parties. UNCLOS has formalised the distance-based approach to maritime boundary delimitation and greatly restricted the role of the natural prolongation principle.

All coastal States have continental shelf rights extending at least 200 nautical miles from the coast, regardless of the geological features of the seabed, as confirmed by the International Court of Justice in *Libya v Malta* (1985):

> *"... whatever the geological characteristics of the corresponding sea-bed and subsoil [within 200 nautical miles from the State's coast], there is no reason to ascribe any role to geological or geophysical factors within that distance either in verifying the legal title of the States concerned or in proceeding to a delimitation as between their claims."*

In *Nicaragua v Colombia* (2012), the Court further stated that the UNCLOS definition of the continental shelf reflects customary international law, which means that all coastal States (including non-parties to UNCLOS) have an automatic entitlement to a continental shelf stretching 200 nautical miles from the coast.



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Maritime Zones

Under UNCLOS, States are entitled to different maritime zones, such as the territorial sea (within 12 nautical miles of the baseline), the exclusive economic zone (which extends up to 200 nautical miles from the baseline), and the continental shelf (which lies under the exclusive economic zone or, in certain circumstances, extends beyond that zone).

- The ***territorial sea*** extends up to 12 nautical miles from a State's baselines (which are generally drawn along the low-water line of the coast). States have control of the airspace above the territorial sea and the water column, seabed and subsoil below.
- The ***exclusive economic zone*** extends up to 200 nautical miles from a State's baselines. States have sovereign rights to exploit living and non-living resources in the water column and the seabed and subsoil (known as the 'continental shelf', as below).
- The ***continental shelf*** extends to at least 200 nautical miles from a State's baselines, regardless of geological factors. In some cases, a State can claim an extended legal continental shelf beyond 200 nautical miles where there is a 'natural prolongation' of the geographical continental shelf. States have exclusive rights to exploit resources that lie in the seabed and subsoil.

Coastal States are entitled to the full breadth of these maritime zones, unless there is a competing or overlapping claim by a neighbouring coastal State.

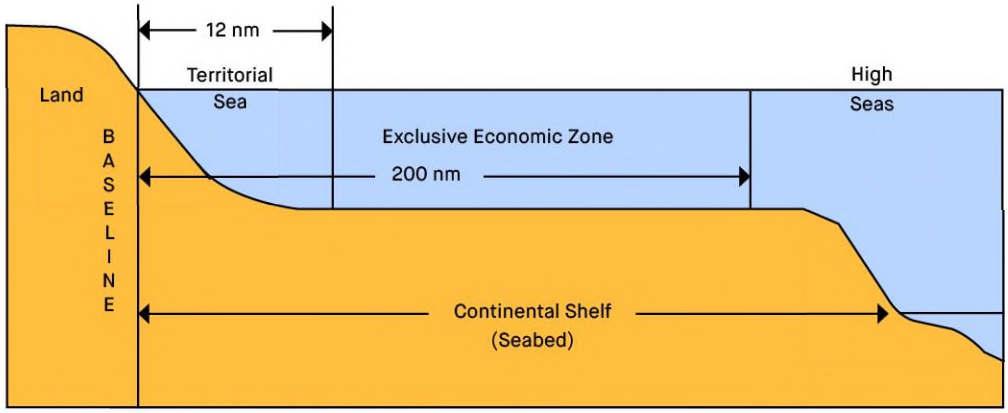


Figure 1: Maritime zones under UNCLOS

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Articles 74 and 83 of UNCLOS provide nearly identical terms on the delimitation of the exclusive economic zone and continental shelf, as follows:

1. The delimitation of the [exclusive economic zone or continental shelf] between States with opposite or adjacent coasts ***shall be effected by agreement on the basis of international law***, as referred to in Article 38 of the Statute of the International Court of Justice, ***in order to achieve an equitable solution***.

2. If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV [Settlement of Disputes].

3. Pending agreement as provided for in paragraph 1, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature and, during this transitional period, ***not to jeopardise or hamper the reaching of the final agreement***. Such arrangements shall be ***without prejudice to the final delimitation***.

4. Where there is an agreement in force between the States concerned, questions relating to the delimitation of the [exclusive economic zone or continental shelf] shall be determined in accordance with the provisions of that agreement.

Maritime Boundary Delimitation Where Claims Overlap

Where neighbouring States have overlapping claims to the exclusive economic zone or continental shelf (for example, in cases where there are less than 400 nautical miles between coasts), those States are required to 'delimit' the maritime boundary between them. The modern law on delimitation is codified in UNCLOS (Articles 74 and 83). UNCLOS requires States with competing claims to reach agreement on a permanent maritime boundary based on international law, in order to achieve an equitable solution.

In most cases, an equitable solution is reached by drawing an equidistance (or 'median') line half-way between their coasts and, where necessary, adjusting it to take account of relevant circumstances such as small, outlying islands or concave coastlines.

With less than 400 nautical miles between their opposite-facing coasts, Timor-Leste and Australia have overlapping claims to exclusive economic zone and continental shelf rights. Similarly, Timor-Leste and Indonesia have adjacent coasts and also have overlapping claims to maritime zones. Under these circumstances, Timor-Leste and its neighbours are all obliged under UNCLOS to negotiate and reach agreement in accordance with the principles of international law (see Articles 74 and 83).

Articles 74 and 83 set out the fundamental objective and principles for delimitation of the exclusive economic zone and continental shelf between neighbouring States. Based on these provisions, a clear, step-by-step methodology for delimiting the boundary between two States developed from the International Court of Justice and the International Tribunal for the Law of the Sea (the two main dispute settlement bodies under UNCLOS).

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Untangling the Terminology

The terms "equitable" and "equidistance" are easily confused, yet they mean different things:

- The overarching goal of a maritime boundary delimitation under UNCLOS is to achieve an **equitable** solution. In this context, it means fair or just, in terms of taking into account relevant circumstances which would otherwise distort the result or adjusting for any disproportionality.
- In contrast to the idea of reaching an **equitable** solution, **equidistance** refers to a specific delimitation methodology. Courts and tribunals generally begin delimitations by drawing a provisional, strict **equidistance** line. An equidistance line is a boundary line, every point of which is **equidistant** (i.e. half-way) between the relevant coasts.



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3.3 The Standard Methodology for Maritime Boundary Delimitation

Since UNCLOS was signed (1982) and came into force (1994), international case law has developed a three-stage methodology for maritime boundary delimitation. This three-stage methodology is known as the "**equidistance/relevant circumstances approach**".

In 2009, the International Court of Justice delivered its judgment in the *Black Sea Case* (*Romania v Ukraine*), which has become the authoritative statement of modern international law on this issue. The case confirmed the three-stage equidistance/relevant circumstances approach for delimiting overlapping exclusive economic zones and continental shelves. Importantly, the Court confirmed that this three-stage approach is focused on achieving an "equitable solution", which is the overarching principle guiding any maritime delimitation, as enshrined in Articles 74 and 83 of UNCLOS. The judgment in the Black Sea Case was not an unexpected statement of new legal principles; rather, it was a concise summary of prior case law and delimitation approaches that had evolved as international law before and after UNCLOS (see, for instance, *Libya v Malta* (1985), *Norway v Denmark* (*Jan Mayen*) (1993), and *Qatar v Bahrain* (2001), among others).

The decision in the *Black Sea Case* was endorsed by the International Tribunal for the Law of the Sea in *Bangladesh v Myanmar* (2012), confirmed again by the International Court of Justice in *Nicaragua v Colombia* (2012) and *Peru v Chile* (2014), and also used by the Arbitral Tribunal (constituted under Annex VII of UNCLOS) in *Bangladesh v India* (2014). This means that all major dispute settlement bodies contemplated under UNCLOS have applied this approach.

Black Sea Case - Romania v Ukraine (2009)

In the *Black Sea Case*, the parties (Romania and Ukraine) disagreed as to the effect of Serpents' Island, a small feature situated 20 nautical miles from the Danube Delta, which forms the two States' land boundary. The Court decided that Serpents' Island was not part of the coastal configuration, so did not use it as a base point. As the base points were the subject of dispute between the parties, the Court adopted its own base points (excluding Serpents' Island) and drew a strict equidistance line boundary. The decision is best known for consolidating prior case law on the correct methodology related to maritime boundary delimitation, by setting out the three stages of the equidistance/relevant circumstances approach.

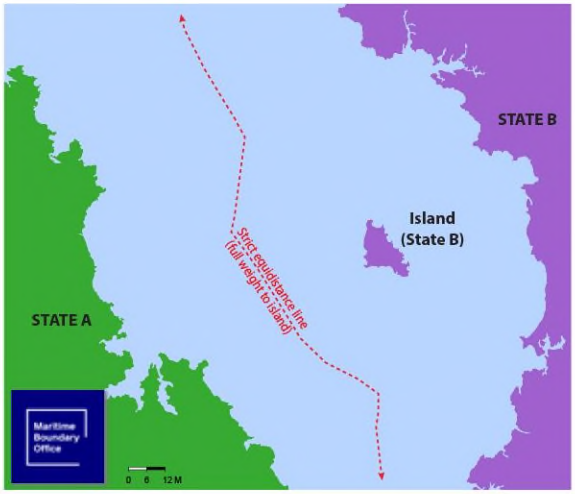
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▶ *Three Steps to Determining Maritime Boundaries Under International Law*

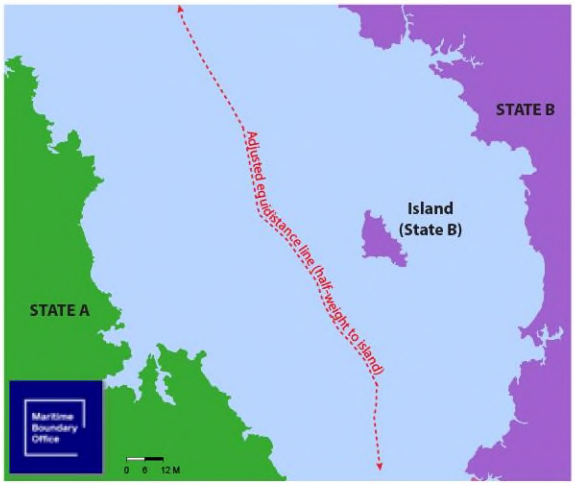
In summary, applying the three-stage approach, a court would:

1 *Draw a provisional 'equidistance line'* (also known as a 'median line') half-way between neighbouring coasts (whether opposite or adjacent), using appropriate physical base points along the low-water line of the coasts;



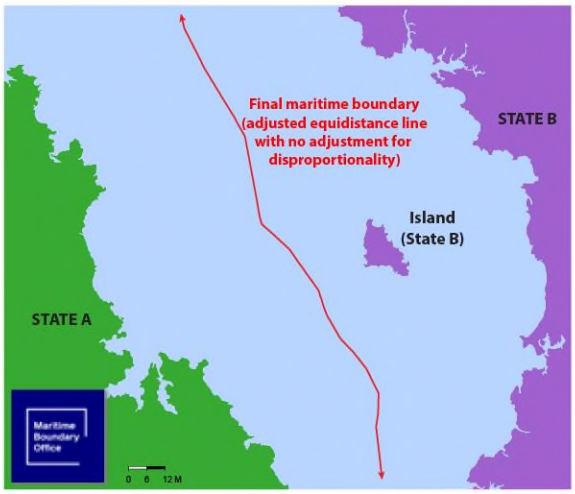
Map 3

2 *Make adjustments for 'relevant circumstances'* which may otherwise have a distortionary effect, such as the presence of islands (less significant islands are generally given a lesser weighting), or the concavity of the coasts (so that the concavity does not 'pinch' or 'cut off' a State's maritime area); and



Map 4

3 *Apply a 'non-disproportionality' test* to ensure an equitable solution has been reached. This involves checking the ratio between the respective delimited maritime areas and the length of each State's coastline.



Map 5

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Libya v Malta (1985)

Shortly after the signing of UNCLOS, the International Court of Justice was asked to determine which principles and rules of international law should apply in a delimitation of the continental shelf between Libya and Malta. In its 1985 decision, the Court initially drew an 'equidistance line', every point at which was the same distance from the low-water marks of Libya and Malta, and adjusted that line northward to account for "relevant circumstances", including the disparity in coastal lengths (Malta's coastline is 24 miles (38.6km), while Libya's is 192 miles (309km)) in favour of Libya.

In an important elaboration following the signing of UNCLOS in 1982 (although not yet in force), the court stated that the role of geological or geophysical factors in the delimitation of coasts within 400 nautical miles of each other "now belongs to the past". This was an important case for rejecting such factors for States in close proximity, and it was the first significant decision which endorsed the equidistance/relevant circumstances approach as being consistent with UNCLOS.



Bangladesh v India (2014)

In this case, the Arbitral Tribunal again endorsed the equidistance/relevant circumstances approach. Bangladesh had submitted that the concavity and the instability of its coast were two "relevant circumstances" which justified adjusting the boundary in Bangladesh's favour. Although the tribunal decided that only the concavity of the coast was a relevant circumstance, it shifted the strict equidistance line beyond the territorial sea in Bangladesh's favour.

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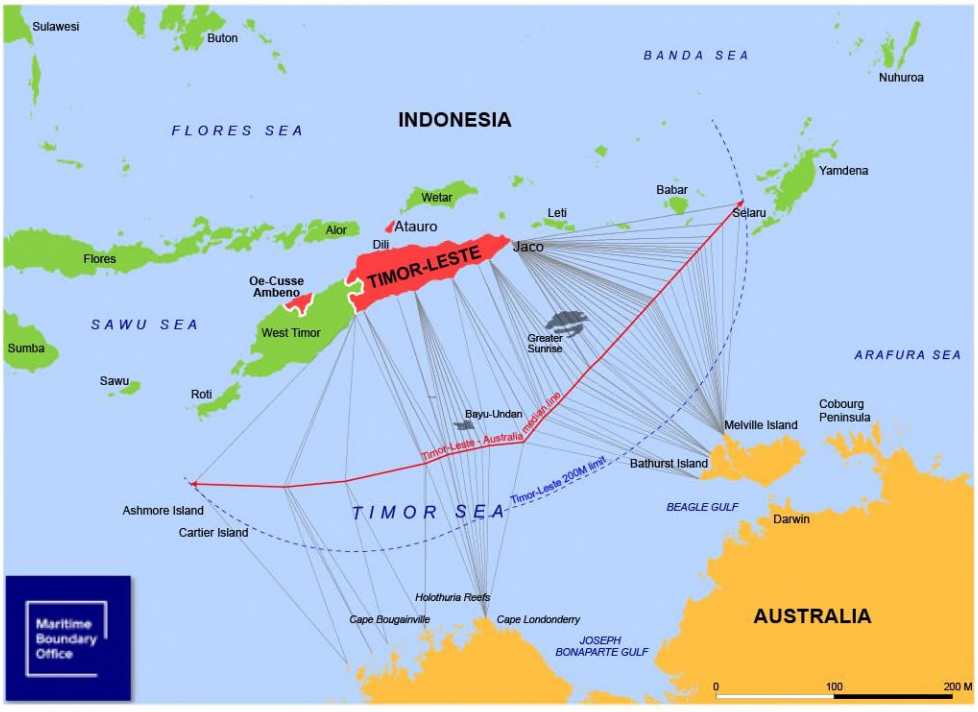
What are Base Points and Baselines?

Coastal States ordinarily use the 'normal baseline' to measure maritime zones. Normal baselines follow the low-water line along the coast.

In exceptional cases, UNCLOS provides that States which meet certain, mostly geographical, conditions can use straight or archipelagic baselines. Indonesia, for example, is an archipelagic State within the definition in UNCLOS, Article 46. As such, Indonesia can claim archipelagic baselines, so long as they conform to the requirements in Article 47. These archipelagic baselines are used to measure the breadth of the territorial sea and enclose the archipelagic waters (essentially the internal waters of the archipelago).

Straight baselines are generally not relevant to the delimitation of maritime boundaries. In the process of delimitation (that is, when addressing overlapping claims between States), the consistent practice of international courts is to use physical base points along the coast.

If Timor-Leste were able to take the matter before a court of law, this is the approach that would be followed to determine the position of its maritime boundaries (as discussed in Chapter 7).



Map 6: Construction of a median line between Timor-Leste and Australia using the three-stage approach

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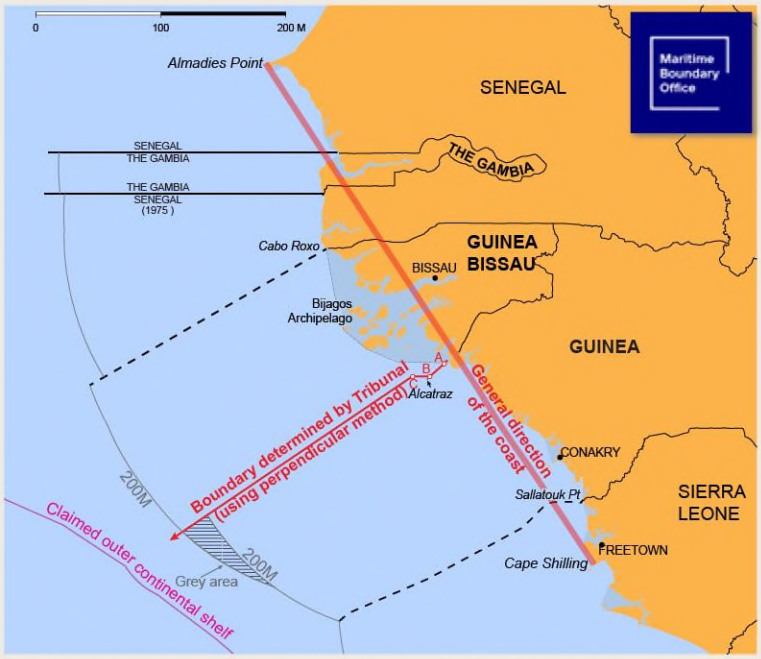
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Rare Exceptions to the Three-Stage Approach

The three-stage approach is to be followed unless there are compelling reasons that make this unfeasible. International cases show that the main alternative methods to the equidistance/relevant circumstances approach are the bisector method and the perpendicular method. Other, less common alternative approaches include a parallel or meridian line, or a line which bears no resemblance to the coast, founded on historical agreements or political factors.

Guinea v Guinea-Bissau (1985)

This case is an example of where the standard equidistance/relevant circumstances approach could not be used due to the exceptionally complex nature of the Guinea-Bissau coast and the presence of numerous islands and the concavity of the coastline. For those reasons, the Arbitral Tribunal used a perpendicular line to delimit the boundary between the States of Guinea and Guinea-Bissau.



Map 7: Guinea v Guinea-Bissau maritime boundary delimitation

Nicaragua v Honduras (2007)



Map 8: Nicaragua v Honduras maritime boundary delimitation

This case is an exception to the standard approach, where the International Court of Justice instead used the bisector approach. The delimitation related to a highly convex and unstable coast (that is, a shifting coastline, e.g. due to erosion and deposition). The parties and the Court all agreed that an equidistance line would be unsuitable, given the disproportionate effect which would be attributed to the only relevant base points - the two outermost points on either side of the highly unstable River Coco at the tip of Cape Gracias a Dios dividing the two nations. Nicaragua proposed a bisector line, whereas Honduras claimed a parallel line on the basis of historic fisheries practices and oil licensing. The judgment noted that "*in instances where, as in the present case, any base points that could be determined by the Court are inherently unstable, the bisector method may be seen as an approximation of the equidistance method*". In practical terms, this means that the Court will use a different approach where there are certain unusual geographic circumstances (in this case, that the land border was at the tip of a river mouth at the end of a cape).

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3.4 The Duty to Negotiate Maritime Boundaries

States have an obligation to negotiate permanent maritime boundaries with their neighbours under UNCLOS as well as customary international law (which applies to all States). Specifically, where two neighbouring States have competing claims to exclusive economic zones or continental shelf rights (in practice, where they are less than 400 nautical miles apart), they are required to reach agreement on the basis of international law in order to achieve an equitable solution (see Articles 74 and 83 of UNCLOS). Any provisional arrangements entered into between parties cannot prejudice claims by either State to permanent maritime boundaries.

The first step to reaching agreement is usually to sit together and negotiate in good faith. The International Court of Justice has held that States are *"under an obligation to enter into negotiations with a view to arriving at an agreement, and not merely to go through a formal process of negotiation" (North Sea Continental Shelf Cases).*

If that fails, or one State refuses to negotiate, States must resolve the dispute peacefully by submitting the dispute to an international court, tribunal or other body under UNCLOS (see section 4.1).

Timor-Leste and Indonesia, for example, have chosen the first option and have commenced bilateral discussions. Both countries have agreed to delimit their maritime boundary according to international law and UNCLOS, as is common when States enter into negotiations.

With Australia, however, neither of those two paths for delimiting maritime boundaries is currently possible. Because Australia withdrew from (or 'carved out') the binding dispute settlement procedures under UNCLOS related to maritime boundaries in March 2002, Timor-Leste cannot take Australia to a court or tribunal to seek a determination on maritime boundaries. Further, Australia has repeatedly refused to negotiate maritime boundaries on a bilateral basis. However, Australia was not able to withdraw from a final mechanism provided under UNCLOS: compulsory conciliation.

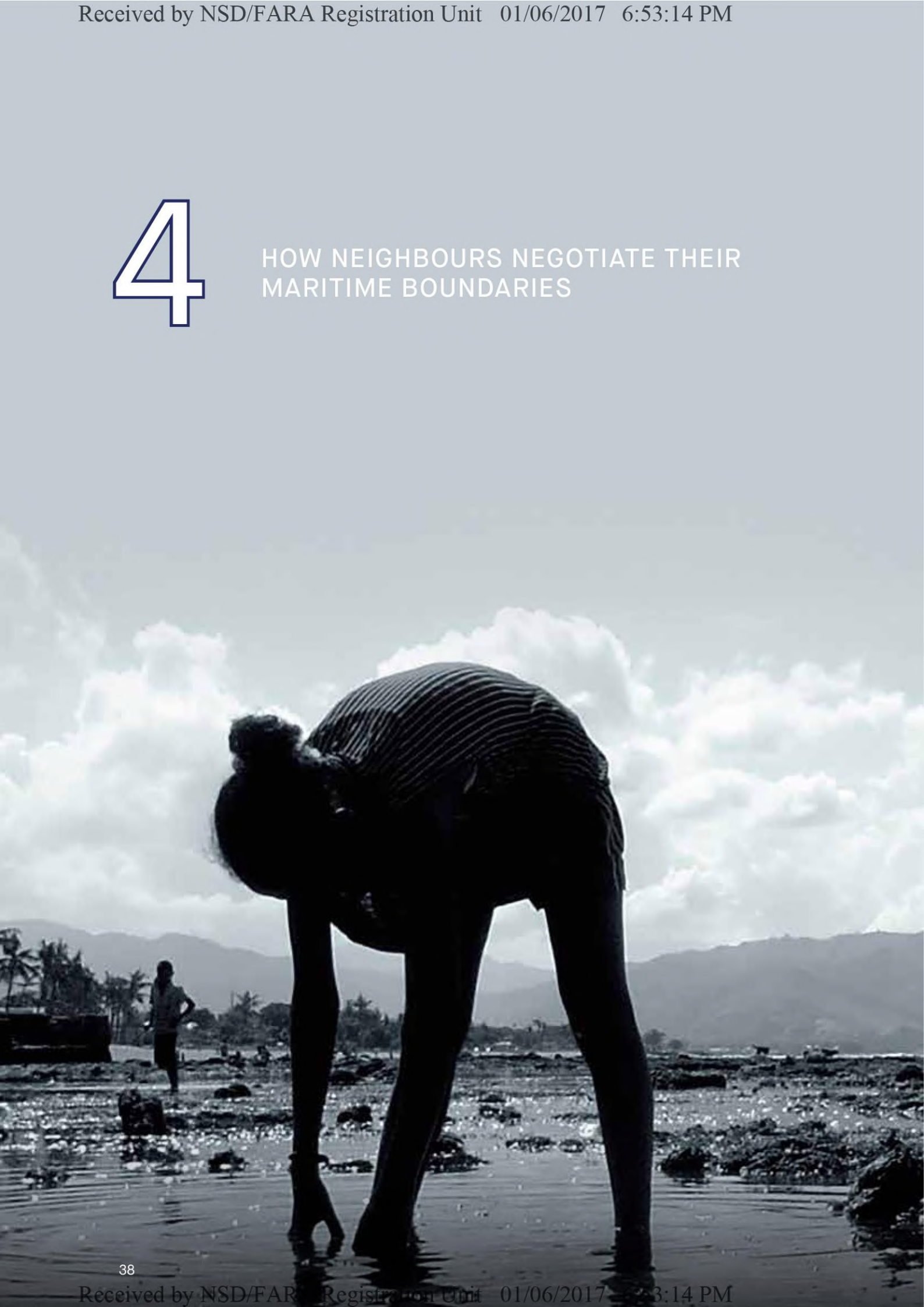
Left with no other option, Timor-Leste commenced the compulsory conciliation process in April 2016, with the hope of reaching agreement with Australia on permanent maritime boundaries. An independent panel of conciliators, known as the Conciliation Commission, engages the parties in a dialogue with a view to reaching a resolution to the dispute. At the end of the year-long process, if no agreement has been reached, the parties to the conciliation are required to negotiate in good faith on the basis of a report by the Conciliation Commission, which is presented to the Secretary-General of the United Nations.

Timor-Leste's engagement with its maritime neighbours, Indonesia and Australia, is discussed further in Chapter 6.

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4 HOW NEIGHBOURS NEGOTIATE THEIR MARITIME BOUNDARIES



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4.1 Avenues for Settling Maritime Boundaries Between Neighbours

The position of maritime boundaries between States with overlapping maritime claims is to be determined by negotiation or, if a negotiated agreement is not possible, the dispute can be submitted to an international court, tribunal or other body under UNCLOS. The binding dispute resolution bodies under UNCLOS include the International Court of Justice, the International Tribunal for the Law of the Sea and other arbitral tribunals.

Where a State refuses to negotiate and has excluded maritime boundary disputes from the jurisdiction of binding dispute resolution bodies, UNCLOS provides an avenue to engage the parties in good faith discussions called compulsory conciliation, as described above in section 3.4.

Timor-Leste remains committed to achieving permanent maritime boundaries through negotiation with its neighbours. Although the preparation required for negotiations is extensive and resource-intensive, Timor-Leste is institutionally prepared. As discussed in Chapter 5, the Government has given a clear mandate to its Chief Negotiator to lead negotiations with Indonesia and Australia in the national interest, while upholding the principles of international law and maintaining good relationships with both neighbours.

As the boundaries will last forever, it is important that they are calculated rigorously and precisely and, crucially, are seen by both sides as an equitable outcome.



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4.2 Preparation Required for Maritime Boundary Negotiations

Before entering into negotiations, substantial internal preparation is required, including obtaining expert technical and legal advice on the maritime boundary position which would be taken under international law. The technical work is particularly important; maritime boundary delimitation requires knowledge of base points, baselines and hydrographic charts, and involves detailed and precise calculation of lengths, areas, maritime limits and equidistance or median lines. It is also important that negotiators have a clear political mandate to take to the negotiations.

The preparatory steps for each party usually include:

- appointing a negotiating team, including representatives of relevant Government agencies and experts in cartography, hydrography, geodetic mapping and international law of the sea;
- collating and analysing information as to the significance of the maritime area, including geographical, historical, social, political, economic and other factors;
- consolidating the Government's position on the issues to be negotiated;
- investing in the necessary technical equipment, including computer hardware and data mapping software;
- inputting preliminary coastline data into a computer database (Geographic Information System), including details of baselines, boundaries, maritime limits and other data, from sources such as large-scale nautical charts, hydrographic surveys, satellite imagery, aerial photography and ground surveys; and
- using the computer database to generate provisional equidistance lines and identify the potential controlling base points and relevant segments of the coastline which could be used in maritime boundary delimitation.

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4.3 Steps Involved in Maritime Boundary Negotiations

A long-term outlook is needed to plan for the negotiations as it can take several years to reach agreement on permanent maritime boundaries. Formal negotiations are often supplemented by joint technical meetings, where the parties' respective technical experts can exchange data and collaborate on the technical work.

While inter-State negotiations on maritime boundaries can take different forms, below is an example of a process that such negotiations may follow:

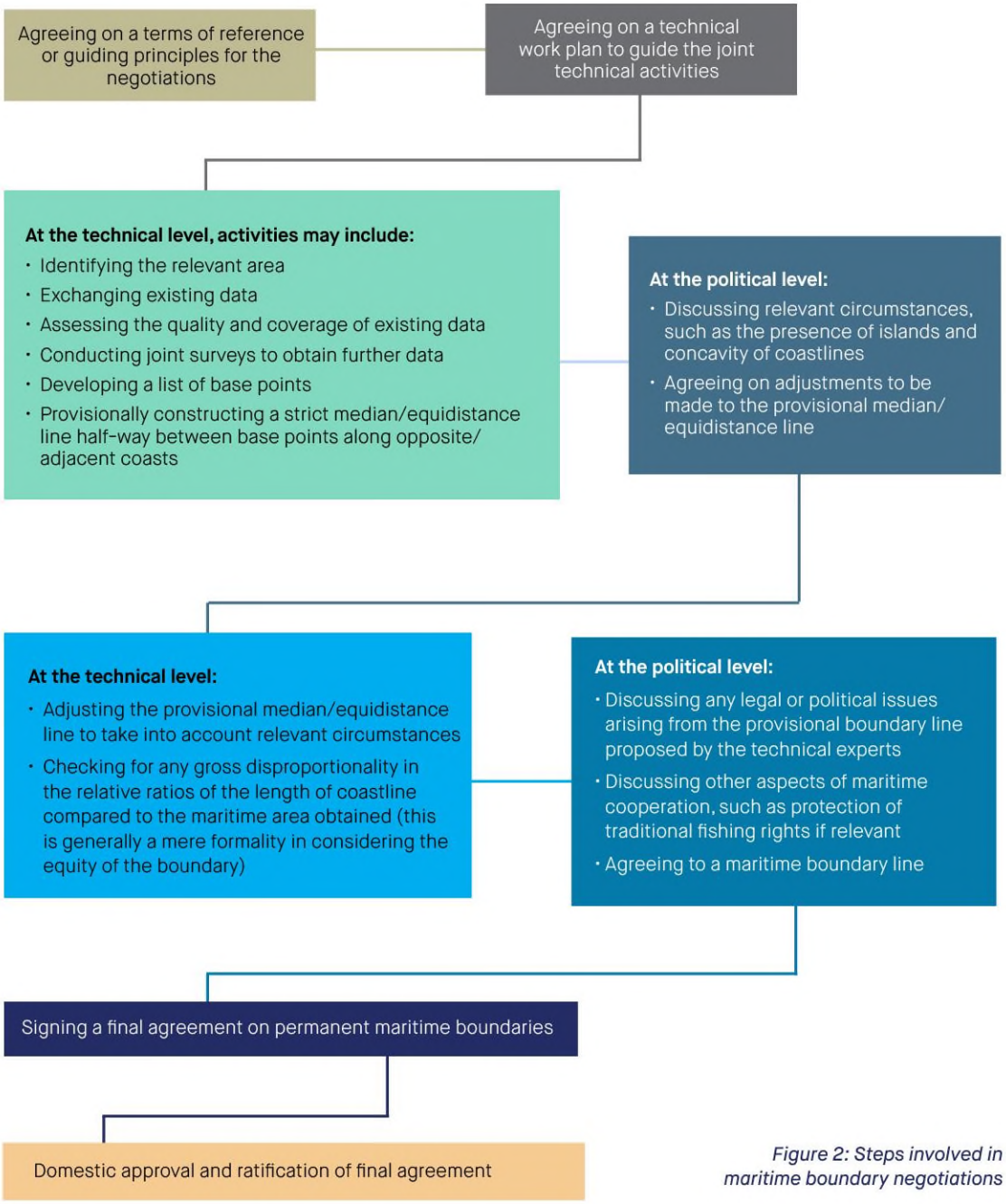


Figure 2: Steps involved in maritime boundary negotiations

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5 FINAL DELIMITATION OF TIMOR-LESTE'S MARITIME BOUNDARIES

5.1 A National Priority for Timor-Leste

Establishing permanent maritime boundaries is a matter of national priority for Timor-Leste. It is the final step in achieving full sovereignty for the newly independent State.

Timor-Leste has always wanted to secure permanent maritime boundaries with both of its neighbours, consistent with its rights under international law. It has taken time for the small nation of Timor-Leste to develop the capacity to seek permanent boundaries with its larger neighbours.

Since the restoration of independence, Timor-Leste has been constructing its State from the ashes of its past. Recovering from a long and traumatic conflict, the young, impoverished State faced the immediate priorities of establishing basic services for the poor and vulnerable and rebuilding the economy. At the same time, the new State was approached by Australia to forge a revenue-sharing arrangement concerning seabed resources in the Timor Sea. The initial Timor Sea Treaty was signed on the very first day when independence was restored. A few years later, Timor-Leste sought to negotiate a permanent maritime boundary with Australia. Timor-Leste was then in a particularly vulnerable position, facing financial pressures as a new, conflict-affected nation, lacking capacity and experience in such complex transactions and in governance, while also in desperate need of revenue to support its nation-building and its citizens.



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The resulting CMATS treaty regime was forged at a very early and difficult stage in Timor-Leste's development as a sovereign nation. CMATS was only ever intended to be a provisional resource sharing arrangement, and was not concerned with maritime boundaries. CMATS was procured unfairly by illegal espionage on Timor-Leste's Government negotiators, and is currently the subject of a legal challenge. In any case, the treaty may be terminated at any time by either party.

Now, as the capacity of the country is rapidly developing, the Government has been giving priority to securing its maritime rights and is committed to meeting its responsibilities as a custodian of the seas. New laws and institutions have since been established to take forward the national agenda on permanent maritime boundaries. The Government is ready to engage in negotiations to finally settle its maritime boundaries with both neighbours.

Maritime boundaries are necessary for completing Timor-Leste's sovereignty and critical for its overall development and security. Securing permanent maritime boundaries will allow Timor-Leste to further develop its petroleum, tourism and fisheries sectors, improve management of living marine resources through regional cooperation, and bring in further investment and resource revenues to support the country's development. It will create downstream diversification and development benefits, particularly on Timor-Leste's southern coast. Additionally, the revenues gained from petroleum development will make available much-needed funding in education, health, infrastructure and other social services.



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5.2 New National Laws and Institutions to Take the Agenda Forward

The new nation of Timor-Leste is ready to meet its obligation under international law to negotiate permanent maritime boundaries with its neighbours. To this end, Timor-Leste has been building its capacity and developing laws and institutions to coordinate its maritime boundary agenda.

The Constitution of Timor-Leste requires the Parliament to define the extent and limit of maritime zones, including territorial waters, the exclusive economic zone and the continental shelf. Shortly after the restoration of independence, Timor-Leste's National Parliament passed *Law No. 7/2002 on Maritime Borders of the Territory of the Democratic Republic of Timor-Leste*. Consistent with international law, the 2002 law establishes Timor-Leste's claim to a full 200 nautical mile exclusive economic zone, and notes that where overlapping claims may exist with any of Timor-Leste's neighbours, the "*delimitation shall be resolved through peaceful means of dispute resolution ... taking into account the principles and rules of international law relating to the delimitation of maritime spaces*".

In October 2014, the National Parliament passed Resolution No. 12/2014, which supported the establishment of a Government body to coordinate negotiations with Australia and Indonesia. In April 2015, the Timor-Leste Government gave effect to this resolution and established the Council for the Final Delimitation of Maritime Boundaries to coordinate and manage Timor-Leste's maritime boundary agenda. The overarching purpose of the Council is to achieve the final settlement of Timor-Leste's maritime boundaries in accordance with international law. Most recently, in a new set of laws passed in early 2016, the Government strengthened the mandate and organisational structure of the Council.

Reflecting the importance of this issue for the nation, H.E. Xanana Gusmão, former President, Prime Minister and a leader of the resistance movement, was appointed as Chief Negotiator. The Chief Negotiator is responsible for, among other roles, defining the negotiation strategy and leading the negotiations, supported by a Negotiating Team and the Maritime Boundary Office.

The Maritime Boundary Office is the operational arm of the Council. It implements a whole-of-State approach to this issue, coordinating between relevant ministries and agencies. The Office supports the development of policy and strategy, supports communications and information on maritime boundary issues, and engages legal and technical experts. The Office has also established a library of informative resources and a website (www.gfm.tl) for those interested in learning more about the international law of the sea and Timor-Leste's pursuit of its maritime boundaries.

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5.3 Natural Resources and Sovereign Wealth

Under the Constitution of Timor-Leste, the natural resources beneath the sea within Timor-Leste's maritime zones belong to the State and are to be used equitably, in accordance with national interests.

Timor-Leste is developing its petroleum industry with its State-owned oil and gas company, TIMOR GAP E.P., leading the way. Established in 2011, Timor GAP E.P. is charged with conducting oil and gas business on behalf of the Government, including building an integrated oil and gas company to cover upstream and downstream activities, as well as services to the petroleum sector.

Timor-Leste's National Petroleum and Minerals Authority (Autoridade Nacional do Petróleo e Minerais) has a key regulatory role in managing and overseeing both onshore and offshore petroleum activities within Timor-Leste's maritime zones. Established in 2008, the National Petroleum and Minerals Authority supervises compliance with rules and standards relating to the exploration, development, production, transportation and distribution of petroleum, natural gas resources and minerals.

At present, Timor-Leste benefits from the capabilities and expertise of international companies which explore and produce oil and gas in the Timor Sea. As part of Timor-Leste's plan for the future, the Government is working towards the development of onshore infrastructure to bolster Timor-Leste's own petroleum industry. This development includes the construction of a supply base, refinery and liquefied natural gas plants on the southern coast of Timor-Leste.

▶ *A Prosperous Future: The National Petroleum Fund*

The Petroleum Fund of Timor-Leste was established in 2005 to ensure that the wealth gained from exploitation of the seabed resources is put towards the future prosperity of the country. The Petroleum Fund follows high standards of transparency and good governance, reflecting Timor-Leste's interests in wisely managing its petroleum revenues.

The Government, through the Ministry of Finance, is responsible for the overall management of the Petroleum Fund on behalf of the people of Timor-Leste. Each year, in accordance with long-term return and risk objectives, petroleum revenue held in the Fund is invested in a diverse range of asset classes to maximise returns and manage the risk of value fluctuations. Since its establishment in 2005, Timor-Leste's Petroleum Fund has risen from an opening balance of US$205 million to approximately US$16.5 billion in June 2016, which is invested to achieve further returns.

The Petroleum Fund reflects Timor-Leste's growing capacity to wisely manage its national resources. Keeping with its commitment to good governance, the Government worked hard to gain accreditation with the Extractive Industries Transparency Initiative in 2010. At the time, Timor-Leste was just the third country in the world to achieve compliance status and the first in the Asia-Pacific region. The Extractive Industries Transparency Initiative sets a high global standard to promote open and accountable management of natural resources. Timor-Leste remains committed to this standard today.

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6 TIMOR-LESTE'S NEIGHBOURS

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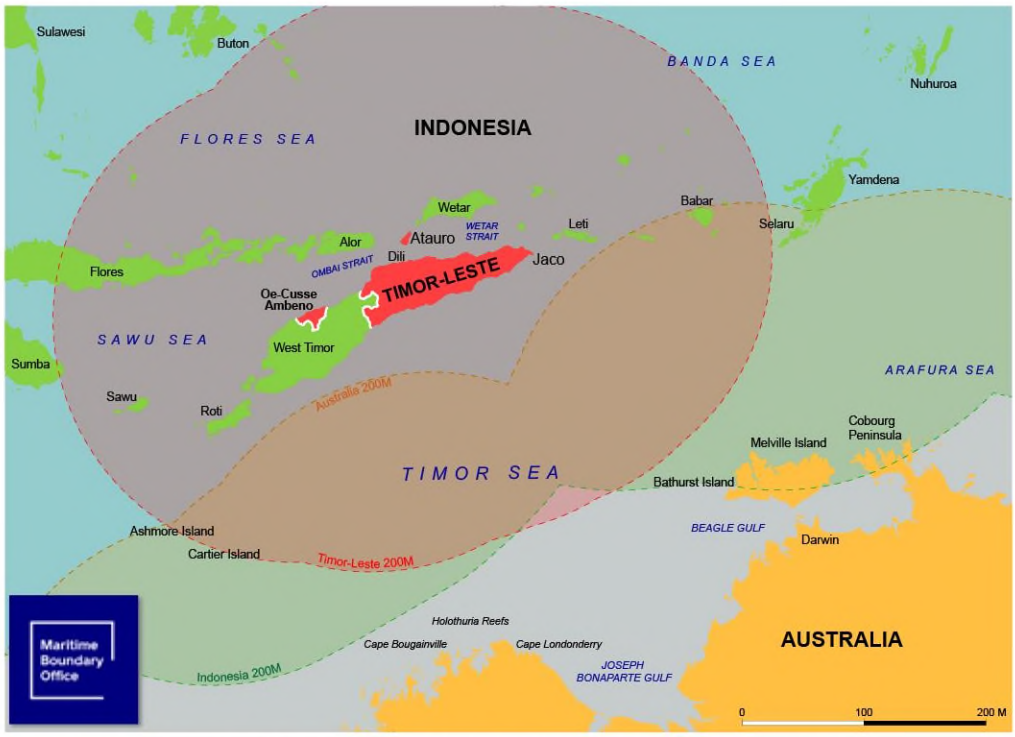
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TIMOR-LESTE'S NEIGHBOURS

Timor-Leste's maritime entitlements overlap with those of its neighbours, Australia and Indonesia. Therefore the boundaries need to be resolved by agreement or the decision of a court or tribunal, in accordance with international law. The relevant areas are:

- To the north of Timor-Leste, where Timor-Leste's maritime claims overlap with those of Indonesia, in particular:
  - In the western Ombai Strait, around Timor-Leste's territory of Oe-Cusse Ambeno
  - In the eastern Ombai Strait and Wetar Strait, around Timor-Leste's northern coast and the island of Ataúro
- In the Timor Sea, to the south of Timor-Leste, where Timor-Leste's maritime claims overlap with those of Indonesia and Australia, as follows:
  - Timor-Leste and Indonesia need to delimit eastern and western laterals (side boundaries) off the southern coast of the island of Timor
  - Timor-Leste and Australia need to delimit a median line which cuts across the Timor Sea, between their opposite coasts



Map 9: Exclusive economic zone overlap between Timor-Leste, Australia and Indonesia

Timor-Leste is currently in discussions with Indonesia on all permanent maritime boundaries between the two States. Australia has so far not agreed to engage in any negotiations with Timor-Leste on permanent maritime boundaries.

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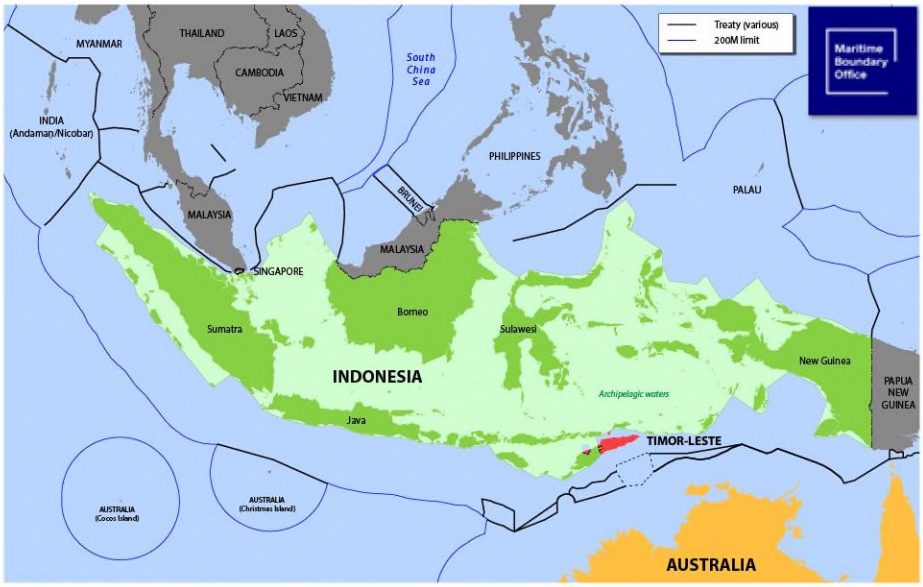
6.1 Indonesia

Indonesia is the largest archipelago in the world. With over 17,000 islands, its archipelagic waters cover more than three million square kilometres. Its claimed exclusive economic zone is almost 90 times the size of Timor-Leste's claim.

Indonesia has a proud history as an archipelagic State and as an active participant in the development of the law of the sea, including UNCLOS. Maritime policy is central to Indonesia's foreign policy. Since the beginning of his administration, President Joko Widodo has expressed his commitment to settling Indonesia's boundaries with all of its 10 maritime neighbours, consistent with his 'global maritime nexus' doctrine.

Timor-Leste and Indonesia enjoy positive and friendly relations. The people of both nations emerged together from the rule of dictatorship to build their new democracies. After 24 years of war, the reconciliation process between Timor-Leste and Indonesia is a globally recognised model. Indonesia is Timor-Leste's largest trading partner and the States cooperate on a broad range of bilateral issues.

Timor-Leste and Indonesia are close to finalising the land boundary between them; around 98% of the border has been agreed. As a testament to the neighbourly goodwill of Indonesia, and the spirit of friendship and respect between Timor-Leste and Indonesia, the two States are now engaging productively on delimiting the maritime boundaries between them in accordance with international law.



Map 10: The Indonesian archipelago

Relevant Bilateral Arrangements between Timor-Leste and Indonesia

Timor-Leste and Indonesia have cooperated on several bilateral issues, including in relation to use of their adjoining seas for fisheries, maritime security and the passage of ships. For example, the two States entered into an agreement on the management of a fisheries catchment area in the seas between them on 24 August 2015. The management plan under this agreement sets out the framework for the collection of data and information. Through the management plan, the two States also agreed to conduct joint maritime patrols to fight illegal trading of goods, plants and animals. During President Joko Widodo's visit to Dili in January 2016, the leaders of both States signed a Joint Communique relating to illegal, unreported and unregulated fishing, among other pledges of cooperation between them.

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Indonesia's Bilateral Arrangements with Australia

Australia and Indonesia have a long history of engagement on maritime issues between them, including on maritime boundaries, from the period before Timor-Leste's independence. However, as only the parties to a treaty are bound by its terms, the existing agreements between Australia and Indonesia do not bind Timor-Leste as a third party.

The 1971 and 1972 Seabed Agreements

Australia and Indonesia finalised their seabed boundaries in the Arafura Sea and eastern part of the Timor Sea in 1971, loosely following an equidistance line.

In 1972, Australia and Indonesia signed a treaty to establish a permanent seabed boundary in the Timor Sea near Timor-Leste. Influenced by Australia's arguments on the now-outdated 'natural prolongation' principle, the boundary line was fixed close to the Timor Trough, giving Australia a much larger seabed zone than if equidistance principles had been applied. Indonesia cannot, consistent with that treaty, claim seabed rights south of the 1972 line against Australia. Australia, at the same time, cannot claim seabed rights north of that line.

The discovery of the lucrative Greater Sunrise field was reportedly made two years later in June 1974. That field is located approximately 0.7 nautical miles (or approximately 1,300 metres) south of the 1972 seabed boundary at its closest point, on Australia's side of the boundary line.

As Portugal was excluded from negotiations, the seabed boundaries established by the 1972 agreement could not address the maritime boundary between the then Portuguese Timor and Australia, therefore creating what was known as the 'Timor Gap'. Since the Timor Gap Treaty of 1989, the provisional treaty arrangements between Australia and Timor-Leste have sought to 'close' the Timor Gap; the northern edge of the current Joint Petroleum Development Area essentially connects the gap between the 1972 boundary on the east and west.

The 1997 Exclusive Economic Zone Agreement

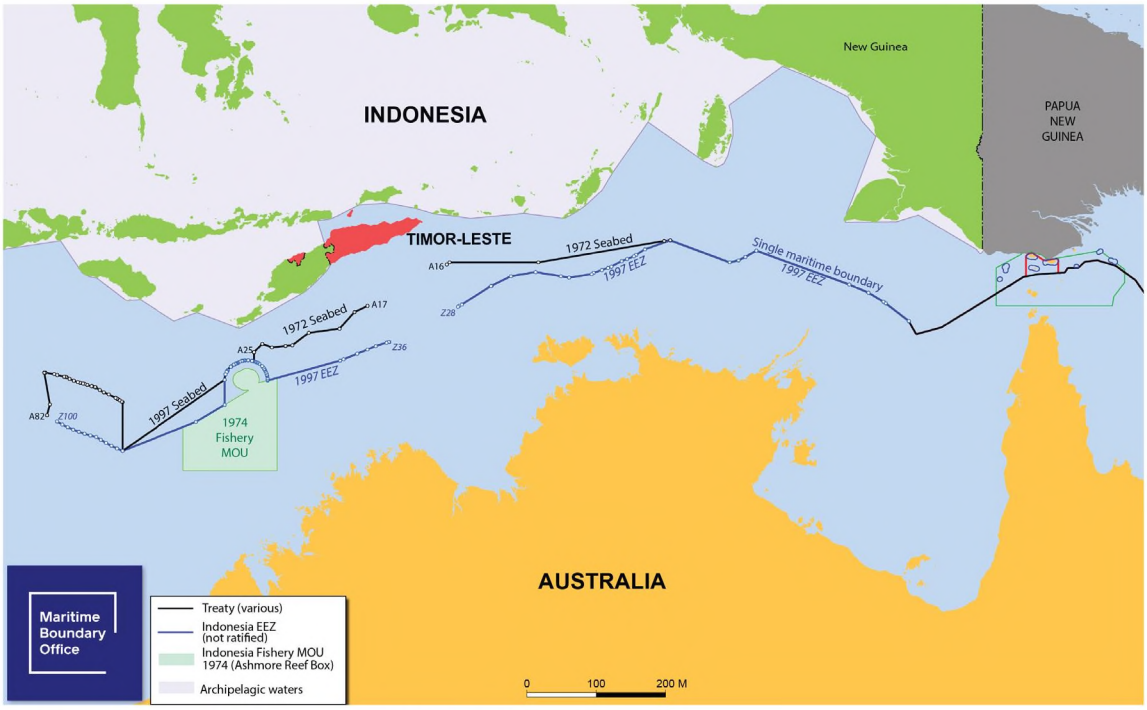
The 1972 treaty between Australia and Indonesia only dealt with the seabed boundary and jurisdiction over seabed resources, including petroleum; it did not address jurisdiction and control over water column resources, including fisheries. In 1997, Australia and Indonesia negotiated a separate treaty which delimited the exclusive economic zone, excluding seabed rights. The boundary was based, broadly, on an equidistance line, and is therefore further south and closer to Australia than the 1972 seabed boundary. The 1997 treaty was signed but never ratified by either State. As such, this treaty is currently not in force, although it appears that both parties act consistently within the terms of the treaty.

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Other Areas of Maritime Cooperation

In addition to these treaties, Indonesia and Australia have entered into a range of formal and informal agreements related to water column rights and fisheries. This began in 1974 when the two States entered into a Memorandum of Understanding on traditional fishing rights within a 12 nautical mile radius of Ashmore Reef, Cartier Island, Scott Reef, Seringapatam Reef and Browse Island. These features are all south of the 1972 seabed boundary (that is, on Australia's side, as far as Indonesia is concerned). The physical shape of the fisheries management, conservation and research area was redrawn in later years. Australia and Indonesia have also established a working group to oversee marine and fisheries issues in the Timor Sea and Arafura Sea, and within defined fisheries catchment areas.



Map 11: Australia and Indonesia's maritime agreements

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Indonesia's Other Maritime Neighbours

Indonesia's vast and complex archipelagic geography means that it has multiple land and sea boundaries. The Indonesian archipelago sits between the Pacific nation of Papua New Guinea on its eastern tip, the Australian continent to its south and various Asian countries to its north and west (including as far as India). Timor-Leste is surrounded by Indonesian islands to the east, north and west. Indonesia officially recognises ten States as maritime neighbours. Of these, Timor-Leste and Palau are the only countries with whom Indonesia is yet to reach a maritime boundary agreement; however, Indonesia has started discussions with both nations.

Apart from Australia, Indonesia has agreements with Malaysia, Singapore, India, Thailand, Papua New Guinea and Vietnam, although none of these maritime boundaries are complete. Indonesia has secured three different agreements with Singapore (1973, 2009 and 2014) and is awaiting a Singapore-Malaysia agreement before commencing discussions to finalise its boundary with Singapore. In 2015, Indonesia agreed with Malaysia to establish a 'special envoy' to discuss the Sulawesi Sea delimitation.

While some negotiations have been concluded in less than two years (such as the seabed treaty negotiations with Australia), others took around 25 years (such as negotiations with Vietnam). The recent 2014 delimitations agreed by Indonesia with another archipelagic State, the Philippines, reportedly took two decades of negotiations, while the agreement with Singapore apparently took 10 rounds of negotiations over three years.



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The new Indonesian Government under President Joko Widodo's leadership has continued the policy of settling permanent maritime boundaries with its maritime neighbours and has committed to following the rules and principles of international law.

Negotiations between Timor-Leste and Indonesia

In August 2015, the leaders of Timor-Leste and Indonesia agreed to renewed and wider discussions, covering both maritime and land boundaries. Timor-Leste commenced talks with Indonesia to finally delimit maritime boundaries in September 2015.

In the initial consultations on maritime boundaries, Indonesia and Timor-Leste jointly developed a set of Principles and Guidelines for the negotiations, and agreed to apply international law, particularly UNCLOS, to maritime boundary delimitation. The discussions are continuing, guided by this shared vision and approach.

In respect of the land border between Timor-Leste and Indonesia, negotiations have been progressing towards completion; the small fraction of the border that is unsettled will be finalised shortly.



Students at Mauraba school in East Timor, where a satellite dish has connected the school with Australia's Northern Territory. November 9, 2015. Photo credit: Helen Davidson for The Guardian.

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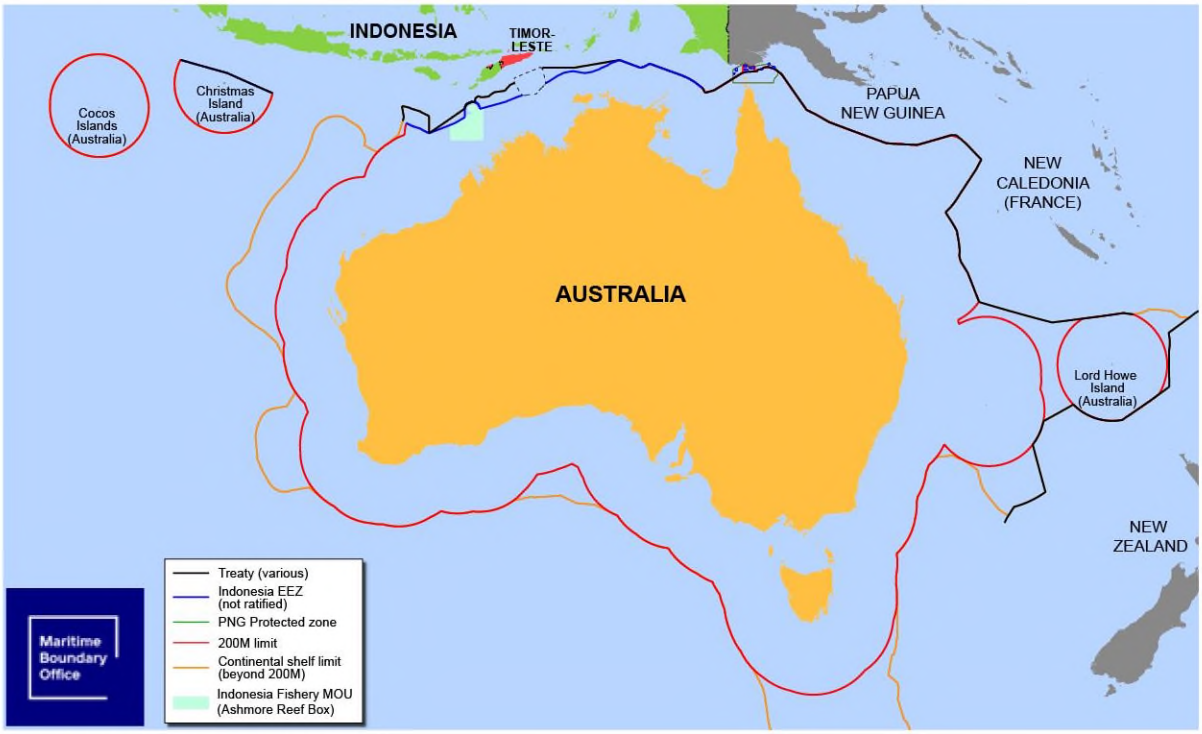
6.2 Australia

Australia has a unique and active involvement in the development of maritime law and law of the sea. Australia has one of the largest maritime zones in the world. Its exclusive economic zone claim is the third largest globally, whereas Timor-Leste has one of the smallest. Australia's claim is more than a hundred times larger than Timor-Leste's.

Timor-Leste and Australia are close friends with a long history. The Australian and Timorese people enjoy warm relationships, including through church networks, veterans' associations, local government and friendship groups.

The bond of friendship between the Timorese and Australian people has been growing since at least World War II. In 1941, as Australia faced the threat of a Japanese military invasion, Australian soldiers arrived in Timor-Leste to fend off the advancing troops. The Timorese people became critical to the Australian operation, helping the soldiers to navigate the thick jungles and mountains of the country and gain a strategic advantage over enemy troops. Thousands of Timorese villagers risked their lives, and many lost their lives, to provide food and shelter, carry supplies and act as guides and scouts for the Australian soldiers. Over 40,000 Timorese died before the end of the war.

Many Australian veterans and those currently serving in the Australian Defence Force have supported Timor-Leste in the years since, believing they owe a debt of honour to the Timorese. They believe that debt was repaid in part when Australia led the United Nations peacekeeping force (known as INTERFET) in 1999, and helped put an end to the violence and conflict in Timor-Leste.



Map 12: Australia's maritime zones

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Provisional Arrangements between Timor-Leste and Australia

Timor-Leste and Australia are yet to reach an agreement on permanent maritime boundaries, however they have provisional arrangements in place to govern the exploitation of resources in the Timor Sea.

UNCLOS affirms that, pending a final agreement, States may enter into provisional arrangements of a practical nature. Such arrangements are "*not to jeopardise or hamper the reaching of the final agreement*" and are "*without prejudice to the final delimitation*" of permanent maritime boundaries (see Articles 74 and 83 of UNCLOS).

There are three main existing agreements between Australia and Timor-Leste regarding the Timor Sea: the Timor Sea Treaty (ratified in 2002), Unitisation Agreement (ratified in 2007), and CMATS treaty (ratified in 2007).

The Timor Sea Treaty was signed on the very day of Timor-Leste's restoration of independence. It was based closely on the terms of the Timor Gap Treaty, which was negotiated between Indonesia and Australia during the Indonesian occupation of Timor-Leste.

The Timor Sea Treaty was purportedly amended by the 2006 CMATS treaty. CMATS was largely negotiated to facilitate the development of the Greater Sunrise field and maintains the arrangement of sharing the revenue from resources in the Joint Petroleum Development Area, which lies in the Timor Sea off Timor-Leste's south coast. Timor-Leste is currently challenging CMATS in the Permanent Court of Arbitration on the basis of alleged espionage by Australian authorities during the CMATS negotiations in Dili. Timor-Leste regards this treaty as null and void.

The Unitisation Agreement addresses a unitised area comprised of the Sunrise and Troubadour fields, known collectively as Greater Sunrise. Under CMATS, resources extracted from Greater Sunrise are subject to a different revenue-sharing arrangement compared to the Joint Petroleum Development Area; Timor-Leste would only receive a 50% share of the revenue from the Greater Sunrise field.

The provisional bilateral arrangements with Australia concerning the Timor Sea do not affect the settlement of permanent maritime boundaries. The treaties regarding resources in the Timor Sea are merely temporary arrangements which do not establish permanent maritime boundaries. The provisions of these treaties expressly acknowledge that they are without prejudice to final delimitation of maritime boundaries.



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CMATS and the Timor Sea Treaty expressly provide that they can be terminated by either State, if a development plan for Greater Sunrise is not approved within six years after the entry into force of CMATS. This deadline has passed and it is open to either party to terminate.

Although Timor-Leste now has a right to terminate the treaties, it prefers to first negotiate with Australia on maritime boundaries and establish transitional arrangements to avoid any disruption to existing activities in the Timor Sea.

Joint Petroleum Development with Australia

There are currently six active production-sharing contracts in the Joint Petroleum Development Area, governed by the provisional revenue-sharing arrangements between Australia and Timor-Leste. Only the Bayu-Undan gas field, which lies entirely in the Joint Petroleum Development Area, is presently producing petroleum. Bayu-Undan produces condensate and liquefied petroleum gas and natural gas, with a pipeline connecting the field to a liquefied natural gas plant in Darwin, Australia.

To the west of the Joint Petroleum Development Area lie three fields: Corallina, Laminaria and Buffalo. Australia has unilaterally depleted these fields and reaped billions in revenue, despite the fact that the fields lie twice as close to Timor-Leste than to Australia.

Greater Sunrise has the largest known deposits of hydrocarbons in the Timor Sea, including an estimated 5.1 trillion cubic feet of natural gas and 226 million barrels of gas-condensate. Nearly 80% of Greater Sunrise lies outside of the Joint Petroleum Development Area.



Map 13: The Joint Petroleum Development Area

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Australia's Other Maritime Neighbours

Australia has finalised nearly all of its vast maritime boundary. Only Timor-Leste remains—less than 2% of unsettled boundary in one of the largest maritime zones in the world.

Apart from Timor-Leste, Australia has maritime boundaries with five nations: Indonesia, Papua New Guinea, Solomon Islands, France (New Caledonia and Kerguelen Islands) and New Zealand. Many of Australia's maritime boundary agreements with its neighbours were concluded within a short timeframe. For instance, Australia concluded a maritime boundary with France (on behalf of New Caledonia) in 1980. Reportedly, the negotiations took just three days, although the treaty was not signed until 1982. Australia also entered into maritime boundary negotiations with the Solomon Islands in October 1978, just three months after the Solomon Islands' independence. The resulting Australia-Solomon Islands boundary appears to be based on a line that is equidistant from Australia's Mellish Reef and the Solomon Islands' Indispensable Reef.

The most complex arrangement negotiated by Australia took less than six years. That agreement, often referred to as the Torres Strait Treaty, was forged between Australia and Papua New Guinea in the 1970s. Not only does it set out four types of maritime boundaries (territorial sea, seabed, fisheries and protected zones for Torres Strait Islanders), but the two nations agreed that Australia would retain sovereignty over a number of islands north of the seabed boundary. Some of the islands, including Boigu, Dauan and Saibai, are located just a few miles from the Papua New Guinean mainland.

Negotiations between Australia and New Zealand on maritime boundaries were concluded after eight meetings over a five-year period. A factsheet released by the Australian Foreign Ministry suggests that the parties considered and applied the equidistance/relevant circumstances approach to the delimitation (see below).

According to a factsheet published by the former Australian Foreign Minister Alexander Downer on 25 July 2004:

> *21. UNCLOS requires that the delimitation of overlapping maritime jurisdictions 'shall be effected by agreement on the basis of international law ... in order to achieve an equitable solution'. There is a significant body of international precedent for maritime delimitation. Each delimitation negotiation is, however, unique, and what may be an equitable result will depend on an analysis of all the relevant circumstances.*
>
> *22. During negotiations, the relevant issues included the relative length of coastlines, the effect of islands, and the distances from relevant coastlines, as well as geomorphological factors such as natural prolongation and the legal and technical case for connectivity of the continental shelf.*

With a few exceptions (such as the 1972 seabed treaty with Indonesia), Australia's permanent maritime boundary agreements with its other maritime neighbours appear to be broadly based on equidistance/relevant circumstances principles.

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An Open Invitation to Australia to Commence Talks

Timor-Leste seeks the same opportunity that Australia has afforded its five other neighbours. Whereas Australia swiftly entered into boundary negotiations with many of its other neighbours, it has so far refused to negotiate on permanent maritime boundaries with Timor-Leste. Australia's focus in the past has been on petroleum development and revenue. The settlement of permanent maritime boundaries would perhaps not be so controversial or complicated but for the resource interests in the Timor Sea.

The existing, provisional arrangements between Australia and Timor-Leste to manage oil and gas activities in the Timor Sea do not provide for maritime boundaries and are expressly and clearly stated in the treaties to be 'without prejudice' to the final delimitation of maritime boundaries. The parties remain bound under UNCLOS to negotiate an agreement on permanent maritime boundaries.

Despite that obligation, Australia seeks to rely on the 'moratorium' clause under CMATS, which is said to prevent the parties from discussing maritime boundaries for a period of 50 years. As previously mentioned, the CMATS treaty was intended to facilitate the Greater Sunrise development and it was specifically agreed that either party could terminate the treaty if the Greater Sunrise development plan was not approved within six years. Almost 10 years has passed and the Greater Sunrise development has not progressed. CMATS has not served its purpose.

Furthermore, CMATS is a provisional treaty and is 'without prejudice' to the final delimitation of maritime boundaries. Both Australia and Timor-Leste, as coastal neighbours, continue to have an obligation under UNCLOS to negotiate permanent maritime boundaries.

Due to Australia's carve-out from dispute settlement procedures under UNCLOS, Timor-Leste cannot seek a binding decision from an international court or tribunal on maritime boundaries. If Australia maintains its carve-out, a permanent maritime boundary between the two States can only be achieved through bilateral negotiations.

In February 2016, and again in August 2016, the Prime Minister of Timor-Leste wrote to the Prime Minister of Australia, repeating the invitation to commence negotiations on permanent maritime boundaries. Australia did not take up either invitation.



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Engaging Australia in Compulsory Conciliation

Since Australia withdrew from binding dispute resolution procedures and still refuses to engage in bilateral talks on maritime boundaries, Timor-Leste exercised its right to institute compulsory conciliation under UNCLOS.

On 11 April 2016, Timor-Leste initiated compulsory conciliation proceedings, with the aim of concluding an agreement on permanent maritime boundaries with Australia. Compulsory conciliation is a procedure under UNCLOS, Annex V, Section 2, in which a panel of conciliators assists the parties to try to reach an amicable settlement of their maritime boundary dispute.

Five conciliators, together constituting the independent 'Conciliation Commission', conduct the proceedings and seek to understand the facts and legal position of each State. The purpose of the conciliation is to bring the parties together to engage in constructive dialogue towards a resolution of the dispute. If Australia and Timor-Leste cannot reach agreement during the conciliation, the Conciliation Commission will provide a report to the Secretary-General of the United Nations with recommendations to assist resolution, within one year of its formation. Australia and Timor-Leste would then be obliged to negotiate an agreement in good faith on the basis of the Conciliation Commission's report.

This procedure can be used in circumstances where no agreement has been reached between neighbouring States and one State has made a declaration excluding the jurisdiction of binding dispute settlement bodies on maritime boundaries, as Australia has done. Compulsory conciliation can help a State like Timor-Leste try to resolve a maritime boundary dispute when other options are unavailable.

The UNCLOS conciliation process will bring Australia to the negotiating table, for the first time, to engage in good faith with Timor-Leste on maritime boundaries. Timor-Leste is committed to working constructively with Australia and the Conciliation Commission to reach a fair and amicable settlement on maritime boundaries.



Figure 3: UNCLOS conciliation process



The Conciliation Commission and the parties at the compulsory conciliation procedural hearing at the Peace Palace, The Hague, on 28 July 2016

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7 TIMOR-LESTE'S MARITIME BOUNDARIES

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Timor-Leste seeks a final and equitable settlement of its maritime boundaries with its two neighbours, Australia and Indonesia. Timor-Leste's position is clear: maritime boundaries should be drawn in accordance with the rules of international law. Timor-Leste asks for nothing more than what it is entitled to under international law. Under international law, where there is a dispute over maritime zones, the defining principle under UNCLOS is to reach a maritime boundary agreement which achieves an equitable solution. A fair and final outcome will promote ongoing goodwill and solidarity between neighbours and contribute to stability in the region.

7.1 The Law

The delimitation of permanent maritime boundaries between Timor-Leste and its neighbours is governed by international law. As discussed in Chapter 3, the relevant international principles are found primarily in UNCLOS and applied in the case law of international courts and tribunals, including the International Court of Justice, the International Tribunal for the Law of the Sea and other arbitral tribunals.

To reiterate, under UNCLOS, maritime delimitation between States with overlapping maritime claims is to be effected by agreement – or if no agreement is reached, then with the assistance of the dispute settlement procedures of UNCLOS – in order to achieve an equitable solution. UNCLOS allows States to conclude provisional arrangements pending delimitation of permanent maritime boundaries, such as the existing resource-sharing treaty regime in the Timor Sea. However, these temporary arrangements are no substitute for, and cannot preclude, a final agreement on maritime boundaries.

Focused on the objective of an 'equitable solution', international courts and tribunals have developed and applied the three-stage methodology, commonly referred to as the equidistance/relevant circumstances approach. This approach is now widely regarded as the proper way to implement the provisions of UNCLOS and customary international law.

The three-stage approach should be applied to determine all of Timor-Leste's maritime boundaries with its neighbours.

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7.2 The Areas to the North of Timor-Leste

To the north of Timor-Leste, in the Wetar Strait and Ombai Strait, Timor-Leste's maritime claims overlap with those of Indonesia. Maritime boundaries will need to be settled to the north of Timor-Leste's mainland coast and around the enclave of Oe-Cusse Ambeno. Timor-Leste is in the course of discussing its maritime boundary in the north with Indonesia, on the basis of international law.

Below is a map showing a strict equidistance line between Timor-Leste and Indonesia. This effectively shows the application of stage one of the three-stage test under international law, and is based on objective, geometric data. Timor-Leste and Indonesia will need to agree whether the strict equidistance line is an appropriate and equitable outcome for both countries, or whether it needs to be adjusted for any relevant circumstances or disproportionality.



Map 14: Provisional equidistance line between Timor-Leste and Indonesia in the north

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7.3 The Areas to the South of Timor-Leste

In the Timor Sea, to the south of Timor-Leste, the maritime area concerns three States: Timor-Leste, Indonesia and Australia. When a maritime area is subject to three overlapping claims, common practice is for two States to agree to a boundary up to the point where that boundary prejudices or affects the rights of a third State (commonly illustrated on a map by showing the agreed boundary with an arrow on the end of the line continuing in the same direction). Each State can then, in turn, pursue a bilateral agreement on its remaining boundary with the third State in order to complete the delimitation process. A "tri-point" will mark the exact point where the boundaries of all three States meet.

Singapore, Indonesia and Malaysia have used this approach with great success. An alternative and more novel approach would be for all three States to sit down and discuss maritime boundaries at the same time.

Bilaterally, Timor-Leste and Indonesia will need to delimit eastern and western laterals off the southern coast of the island of Timor.

Timor-Leste has long held the view that a median line boundary is the appropriate southern boundary between Australia and Timor-Leste, as there is no apparent need to deviate from the half-way line between the two countries. The length of this median line (i.e. how far it extends east and west) involves a consideration of both the eastern and western lateral boundaries to the south of Timor-Leste.



Map 15: Median line between Australia and Timor-Leste

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Historical Agreements

The position of the eastern and western sides of the Joint Petroleum Development Area reflect certain historical agreements between Indonesia and Australia, forged during occupation and before Timor-Leste's independence.

In the early 1970s, when Australia and Indonesia entered into seabed boundary negotiations, Portugal, which was Timor-Leste's colonial administrator at the time, was not allowed to join these talks, despite its repeated requests. The 1972 agreement between Australia and Indonesia fixed a seabed boundary between them, which left a gap where Portuguese Timor's rights supposedly began and ended. It was in both Australia and Indonesia's interests for that gap to be as narrow as possible—while it was to the detriment of the Timorese, who, like Portugal, had no role in the negotiations. The gap in the 1972 boundary was 'closed' by the Timor Gap Treaty in 1989, a treaty struck by Australia and Indonesia while Timor-Leste was under an illegal occupation. That treaty lapsed following Indonesia's withdrawal from the territory in October 1999.

These historical treaties have left their traces in the current, provisional Joint Petroleum Development Area, which is positioned between the same points on the 1972 Australia-Indonesia treaty line.

Eastern Lateral

The eastern lateral (off to the east of Jaco Island, running south into the Timor Sea) has been the subject of significant interest and debate at least since 1972. This may be because that part of the Timor Sea is rich in oil and gas reserves. Not only did the 1972 agreement between Australia and Indonesia attempt to push Timor-Leste's laterals inwards (reducing Timor-Leste's purported maritime area), but it also pushed the boundary with Australia further north, putting the Greater Sunrise field on Australia's side of the line (coming within 0.7 nautical miles to the line at its closest point).

It is important to note that under international law a third State cannot be bound by treaties it has not signed. The existence of the 1972 agreement does, however, mean that Australia has waived its seabed rights against Indonesia north of the line, and Indonesia has waived its rights south of the line.

The 1972 line is based on the assumption that full weight should be given to the "Leti group" of Indonesian small islands (Leti, Moa and Lakor), which are located east of Timor-Leste. That assumption is legally incorrect. It was on that flawed basis that the eastern lateral boundary under the later, provisional treaties (i.e. the eastern side of the Joint Petroleum Development Area) was constructed as a strict equidistance line. Only a full weighting to the Leti group would produce a strict equidistance line on the eastern lateral.

Timor-Leste is not bound by the 1972 line and the attribution of full weighting to the Leti group of islands. Under international law, these islands should be given lesser weight, taking into account that they are small, scattered and outlying (see Maps 16, 17 and 18), as well as sparsely populated and have limited economic activity. This follows well-established case law including the *Black Sea Case* (Serpent's Island), *Bangladesh v Myanmar* (St Martin's Island) and *Qatar v Bahrain* (various small islands). In these cases, the islands in question were given nil or reduced weighting.

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Map 16: Timor-Leste and the Indonesian islands to the east



Map 17: The Indonesian islands to the east of Timor-Leste relative to Indonesia's archipelago



Map 18: Timor-Leste and the surrounding Indonesian islands



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Timor-Leste has always maintained that it is comfortable with submitting to an international court or tribunal for their impartial view on where all or part of its maritime boundary should lie. Under such a process, Timor-Leste would be confident that these islands would not be given full weighting.

If the Leti group of islands are given reduced weighting, this has the effect of pushing the boundary out, like a pendulum swinging eastwards.

Qatar v Bahrain (2001)

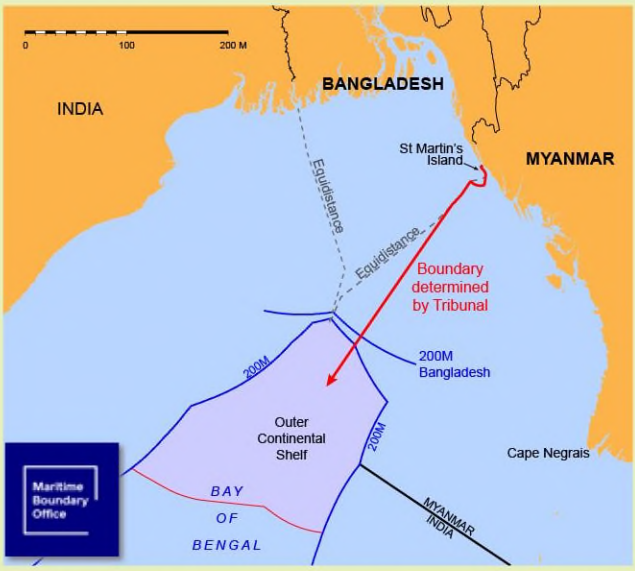
The International Court of Justice delimited a maritime boundary between the mainland State of Qatar and the island State of Bahrain in 2001. The boundary was complicated by the numerous small islands and low-tide features in the delimitation area. In describing the methodology for delimiting a single maritime boundary between the two States, the Court noted that "the most logical and widely practised approach is first to draw provisionally an equidistance line and then to consider whether that line must be adjusted in the light of the existence of special circumstances." In its judgment, the International Court of Justice attributed no weight to low-tide elevations, nor resource deposits, and reached an adjusted equidistance line taking into account islands in the area.



Map 19: Qatar v Bahrain maritime boundary delimitation

Bangladesh v Myanmar (2012)

This was the first maritime boundary delimitation case heard by the International Tribunal for the Law of the Sea. The tribunal adopted the equidistance/relevant circumstances approach of the International Court of Justice. In delimiting the exclusive economic zone and continental shelf boundary, the small island of St Martin's was given nil weight to adjust for the unwarranted distorting effect (although it was fully accounted for in delimiting the territorial sea). St Martin's Island has a permanent population of around 7,000 and is about 8km² in area. The major concavity of the Bangladeshi coast, causing it to 'cut-off' the Myanmar coastal projection, was also treated as a relevant circumstance. The resulting boundary was an adjusted equidistance line.



Map 20: Bangladesh v Myanmar maritime boundary delimitation

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Map 21: Black Sea Case (Romania v Ukraine) maritime boundary delimitation

Black Sea Case – Romania v Ukraine (2009)

In the *Black Sea Case*, a key issue was the role of a small island in maritime boundary delimitation. The International Court of Justice characterised Serpents' Island, a 0.17km² island, as "*alone and some 20 nautical miles from the mainland.*" In applying the three-stage approach, the Court (in a unanimous judgment) concluded that "*to count Serpents' Island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorises*". Consequently, the court completely discounted Serpents' Island in its ruling on maritime delimitation, due to the island's size, location and remoteness.

▶ *Western Lateral*

The western lateral has also been the subject of much interest. Three oil and gas fields, Laminaria, Corallina and Buffalo, are located marginally to the west of a strict equidistant western lateral, outside of the Joint Petroleum Development Area. These fields have been depleted by Australia.

Timor-Leste and Indonesia, and to an extent Timor-Leste and Australia, will need to decide if there is to be any adjustment to an equidistance line on the western lateral.

A relevant circumstance under international law could be the concavity of Timor-Leste's coastline.

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7.4 Timor-Leste's Maritime Boundaries under International Law

The following map represents an equitable solution to the delimitation of permanent maritime boundaries between Timor-Leste and its neighbours, applying the three-stage methodology under international law.



Map 1: Timor-Leste's maritime boundaries under international law

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8 WHAT MARITIME BOUNDARIES MEAN FOR THE FUTURE OF TIMOR-LESTE



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8.1 Completing Timor-Leste's Sovereignty

The young nation of Timor-Leste has struggled through a long history of colonisation, conflict and occupation. Against the odds, the people won back their freedom and independence. The struggle is not over yet. The final frontier lies in the surrounding seas and oceans. It is critically important for the people of Timor-Leste to have their maritime rights under international law recognised. Gaining the maritime areas and resources to which Timor-Leste is entitled would give the Timorese people control over their own future.

Establishing permanent maritime boundaries will grant Timor-Leste access to its seas and the natural wealth within. Timor-Leste is, for example, losing significant amounts in revenue through illegal fishing in and near the Joint Petroleum Development Area. Securing maritime boundaries will allow Timor-Leste to better explore and develop its fisheries, tourism and petroleum resources, encourage business and investment, manage its overall development and security, and contribute to the future of Timor-Leste through further investments in the sovereign wealth fund.

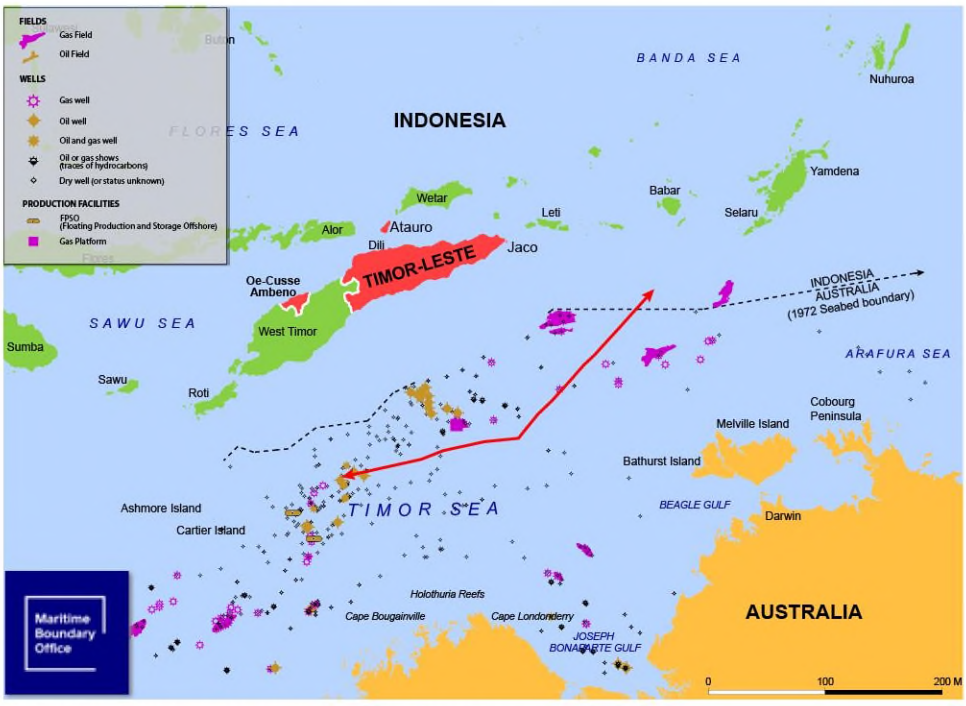
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8.2 Implications for Petroleum Development in the Timor Sea

Petroleum development is of national importance to Timor-Leste. The ultimate beneficiaries are the people of Timor-Leste. The oil and gas revenues flowing from existing production arrangements in the Timor Sea account for a substantial portion of Timor-Leste's budget and contribute to jobs and overall growth in the local economy. The Timor-Leste Government has a supportive and constructive relationship with the oil and gas industry and the international investment community, particularly those petroleum companies and investors which are already engaged in contracts in the Timor Sea.

Establishing permanent maritime boundaries would not harm current commercial arrangements. To the contrary, resolving the issue of maritime boundaries with Australia will create certainty for petroleum companies and investors with resource interests in the Timor Sea. Timor-Leste is committed to supporting investors and companies currently operating in the Timor Sea, to allow the continuation of existing activities without disruption. In order to maintain consistency and certainty, when the temporary arrangements are dissolved to make way for permanent maritime boundaries, Timor-Leste sees it as desirable to agree in advance on transitional regulatory arrangements. Those arrangements would seek to ensure continuous operations and to maintain confidence for ongoing investment, exploration and development.



Map 22: Oil and gas fields in and near the Timor Sea

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8.3 Maritime Boundaries for the Future Development of Timor-Leste

Maritime boundaries are a critical part of Timor-Leste's overall plan for its future development. The national long-term *Strategic Development Plan 2011 - 2030* sets out a bold but achievable vision for the future of the nation. This vision comprises several pillars: building the country's social capital, infrastructure development, economic development, a strong institutional framework, and improving the macroeconomic direction of national development. Securing maritime boundaries fortifies each of these pillars, for example:

- Finalising maritime rights in Timor-Leste's surrounding seas will boost the local fisheries, tourism and petroleum sectors and bring certainty to those local communities who rely on the oceans for their livelihoods *(economic development)*
- The revenue in the sovereign wealth fund is gradually invested into national priorities including education, health, and social inclusion (social capital), as well as roads, ports and utilities *(infrastructure development)*
- Securing maritime boundaries will strengthen the confidence of the business community and lead to greater jobs, investment and innovation which will boost the domestic economy *(macroeconomic development)*
- Timor-Leste already has in place national institutions to oversee and implement the responsible management of petroleum resource revenues and has instituted good governance and anti-corruption measures; these institutions will be strengthened as they receive more responsibility and control over natural resources *(institutional framework)*

Further, resolving the maritime boundary issue will foster stronger relationships between Timor-Leste and its neighbours. Australia, Indonesia and Timor-Leste each have a role in maintaining regional security and stability. Clearly defined maritime boundaries that reflect international law will serve the national interests of each nation, while contributing to certainty, stability and peace in the region.

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9 CONCLUSION

Throughout history, the Timorese people have fought long and hard for their sovereignty. Following nearly five centuries of Portuguese colonialism and nearly a quarter century of occupation and conflict, the Timorese people restored their independence and won back their Statehood in 2002. The struggle for sovereignty, however, continues. The next frontier is in the deep, blue seas off the Timorese coast.

The seas which surround the island sustain the people of Timor-Leste—they are integral to Timorese livelihoods, culture and way of life.

Due to its resource wealth, the Timor Sea is also the subject of national and commercial interest, and has been for decades. While Timor-Leste was under Indonesian occupation, Australia and Indonesia began negotiations concerning the seabed resources in the Timor Sea, and commercial production of those resources.



TIAL AND SUBJECT TO LEGAL PROFESSIONAL PRIVILEGE
OR INTERNAL DISCUSSION PURPOSES ONLY
BUTE WITHOUT EXPRESS PERMISSION OF AUTHOR

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The illegal and illegitimate seabed treaty forged between Australia and Indonesia during the occupation left its legacy in the subsequent petroleum development treaties agreed between Australia and Timor-Leste following independence. Those provisional arrangements divide the revenue from joint petroleum development in an area that lies closer to Timor-Leste, above the supposed median line between Timor-Leste and Australia. The existing treaties are, however, provisional and do not fix permanent maritime boundaries in the Timor Sea.

Timor-Leste does not have permanent maritime boundaries with either of its neighbours, Australia or Indonesia. Until the boundaries between them are finally settled, there remains uncertainty as to where each State's maritime zones lie.

It is a national priority for Timor-Leste to define the full extent of its sovereign rights. In the years since regaining its independence, Timor-Leste has been building its negotiating capacity, establishing laws and national institutions to take forward its maritime boundary agenda, and engaging both of its great neighbours to commence negotiations on permanent maritime boundaries.

Immediately before Timor-Leste restored its independence, Australia excluded the jurisdiction of international dispute resolution bodies on maritime boundary delimitation. This 'carve-out' eliminates the possibility of a court or arbitral determination on the position of maritime boundaries under international law. The only way to settle the issue with Australia is through bilateral talks. Yet Australia has consistently declined Timor-Leste's invitation to commence talks. Maritime boundary discussions with Indonesia, on the other hand, are currently underway. Timor-Leste has since initiated a conciliation process with Australia under UNCLOS, as the only available option to engage Australia in maritime boundary discussions.

All that Timor-Leste seeks is its maritime rights under international law. Both to the north and south of Timor-Leste, the method for delimiting maritime boundaries under international law is the three-stage approach, known as the 'equidistance/relevant circumstances approach'. The guiding principle under UNCLOS is reaching an equitable solution.

Securing permanent maritime boundaries will create certainty for Timor-Leste's immigration, security, tourism, fisheries and resource sectors; bring in investment and economic benefits; and enhance the development and prosperity of the young, emerging nation. It will also contribute to regional stability.

Most importantly, for the island people of Timor-Leste, this is a matter of principle and sovereign rights. Once their maritime rights under international law are recognised, the Timorese people will have reached the end of a long struggle for their sovereignty and can finally enjoy, with peace and dignity, the rich and beautiful seas which belong to them.

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APPENDIX 2: GLOSSARY

The purpose of this glossary is to assist in the understanding of common terms related to the Timor Sea, maritime boundaries and UNCLOS. The glossary is not intended to be a comprehensive list of all relevant terms and the explanations provided are not technical or legal in nature.

Adjacent coasts	Coasts which are next to each other and share a land boundary, such as the coasts of West Timor (Indonesia) and the mainland of Timor-Leste. Coasts that do not abut yet project in the same direction are also said to be adjacent, such as Timor-Leste and the small Indonesian islands lying to the east.
Archipelagic baselines	If a country is considered an archipelagic State under UNCLOS, it may use straight archipelagic baselines joining its main islands to measure the breadth of its territorial sea and other zones. Indonesia is an example of an archipelagic State – waters between the main islands in Indonesia are treated as archipelagic (and internal) waters under UNCLOS. Archipelagic baselines are not used in maritime boundary delimitation between States.
Archipelago	A group of islands and interconnecting waters which are so close to each other so as to be considered a single entity, such as Indonesia.
'Carve out' (of maritime boundary jurisdiction)	The term is used to describe when a State withdraws from compulsory dispute resolution procedures. Australia 'carved out' this jurisdiction under the Convention two months before Timor-Leste's restoration of independence in 2002. This means that Timor-Leste cannot ask the International Court of Justice or International Tribunal for the Law of the Sea to make a binding determination as to the maritime boundary between Australia and Timor-Leste without the explicit agreement of Australia.
Coastal State	A term used in UNCLOS to describe a country which has a coast.

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Compulsory Conciliation	Compulsory conciliation is a procedure under UNCLOS (Annex V, Section 2) in which a panel of five independent conciliators, known as the Conciliation Commission, assists the parties to try to reach an amicable settlement of their dispute. This procedure can be used in circumstances where no agreement has been reached between neighbouring States and one State has made a declaration excluding the jurisdiction of binding dispute settlement bodies on maritime boundaries, as Australia has done.
Concave (coastline)	A coastline which curves inwards.
Continental shelf	The continental shelf comprises the seabed and subsoil beneath it. Under UNCLOS, a coastal State is entitled to a continental shelf which extends at least 200 nautical miles from that State's baselines. In some cases, a State can claim an extended continental shelf beyond 200 nautical miles where there is a 'natural prolongation' of the shelf. Australia has internationally recognised continental shelf claims beyond its 200 nautical mile exclusive economic zone in certain parts of its coastline.
Convex (coastline)	A coastline which curves outwards.
Delimitation	The drawing of a maritime boundary between two or more countries.
Document seizure case	This case was between Australia and Timor-Leste and it was heard by the International Court of Justice. In 2013, Australian security agents took a number of documents from the premises of one of Timor-Leste's lawyers in Canberra, Australia. Australia alleged that the material contained classified information. Timor-Leste argued that the documents should not have been seized. In a provisional measures order (which is not a final order), the International Court of Justice, by a strong majority, said that Australia should seal the documents (and not look at them) and that Australia should not interfere with Timor-Leste's communications with its lawyers in the future. Timor-Leste discontinued the case after Australia returned the documents. This case is different to the espionage arbitration under the Timor Sea Treaty.
Equidistance line	A continuous line which is equidistant (that is, halfway) between two opposite or adjacent coasts. For example, if two countries agree to a maritime boundary which follows an equidistance line, every point on that line is the same distance from both countries (note that it might curve or turn sharply to reflect the two countries' coastlines and so that the line is exactly equidistant from both coasts at all points along the line). A median line has the same meaning as an equidistance line.

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Equidistance/ relevant circumstances approach

The modern approach taken by the International Court of Justice (and other major maritime boundary dispute resolution bodies) to determine maritime boundaries for countries with overlapping exclusive economic zones and continental shelves. Both the International Court of Justice and International Tribunal for the Law of the Sea use this approach.

There are three steps to the approach:

1. *Draw a provisional 'equidistance line'* (also known as a 'median line') half-way between neighbouring coasts (whether opposite or adjacent), using physical base points along the low-water line of the coasts;
2. *Make adjustments for 'relevant circumstances'* which may otherwise have a distorting effect, such as the presence of islands (less significant islands are generally given a lesser weighting), or the concavity of the coasts (so that the concavity does not 'pinch' or 'cut off' a State's maritime area); and
3. *Apply a 'non-disproportionality'* test - a final check to ensure an equitable solution has been reached. This involves comparing the ratios of the respective delimited maritime areas and the lengths of each State's coastline.

Espionage arbitration

This arbitration, brought under the Timor Sea Treaty, is an ongoing dispute between Australia and Timor-Leste. The dispute is being heard by a tribunal at the Permanent Court of Arbitration at The Hague. Timor-Leste alleges that Australia spied on Timor-Leste during the negotiation of the CMATS treaty. Timor-Leste is challenging the validity of CMATS and the amendment of the Timor Sea Treaty by CMATS. This case is different to the document seizure case which was heard before the International Court of Justice.

Exclusive economic zone (EEZ)

The exclusive economic zone extends up to 200 nautical miles from a State's baselines. Within a State's own zone, it has exclusive rights to exploit living and non-living resources in the seabed, subsoil and water column.

Greater Sunrise

The largest known oil and gas reserve in the Timor Sea. The Greater Sunrise field is comprised of the Sunrise field and Troubadour field. Other notable fields in the Timor Sea include Bayu-Undan, Laminaria, Corallina, Buffalo, Kitan, Elang and Kakatua.

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Internal waters	Waters which are located on the landward side of a country's baselines. For instance, a river or a lake. A State has similar rights to its internal waters as it does to its land. A special rule applies to archipelagic States, which says that all waters within the archipelago are considered to be archipelagic waters which are broadly treated like internal waters though other nations have certain navigation rights.
International Court of Justice	The main court of the United Nations, also popularly known as the 'World Court'. Only States can be parties to proceedings before this court. UNCLOS gives the International Court of Justice jurisdiction to hear maritime boundary disputes between countries. The International Court of Justice is located at The Hague in the Netherlands.
International Tribunal for the Law of the Sea	A court established to resolve disputes relating to UNCLOS. This includes maritime boundary disputes. The International Tribunal for the Law of the Sea is located in Hamburg, Germany.
Joint Petroleum Development Area	The area in the Timor Sea which was established by the Timor Sea Treaty between Australia and Timor-Leste in 2002. In this area, exploration and exploitation of petroleum resources is jointly controlled and managed by Timor-Leste and Australia.
Low-water line	Where the sea meets the land at low tide. The low-water line is used as the normal baseline for measuring maritime zones.
Maritime boundary	Coastal States are entitled to define or 'delimit', where necessary by agreement, the extent of their sovereign rights at sea in accordance with international law. UNCLOS recognises different kinds of rights to maritime areas, such as the territorial sea (close to the coastline), the exclusive economic zone (which extends up to 200 nautical miles from the coastline), and the continental shelf (which underlies the exclusive economic zone and may extend beyond the exclusive economic zone in certain circumstances). Each State may exercise full sovereignty over its territorial sea and sovereign rights beyond the territorial sea up to its maritime boundary.

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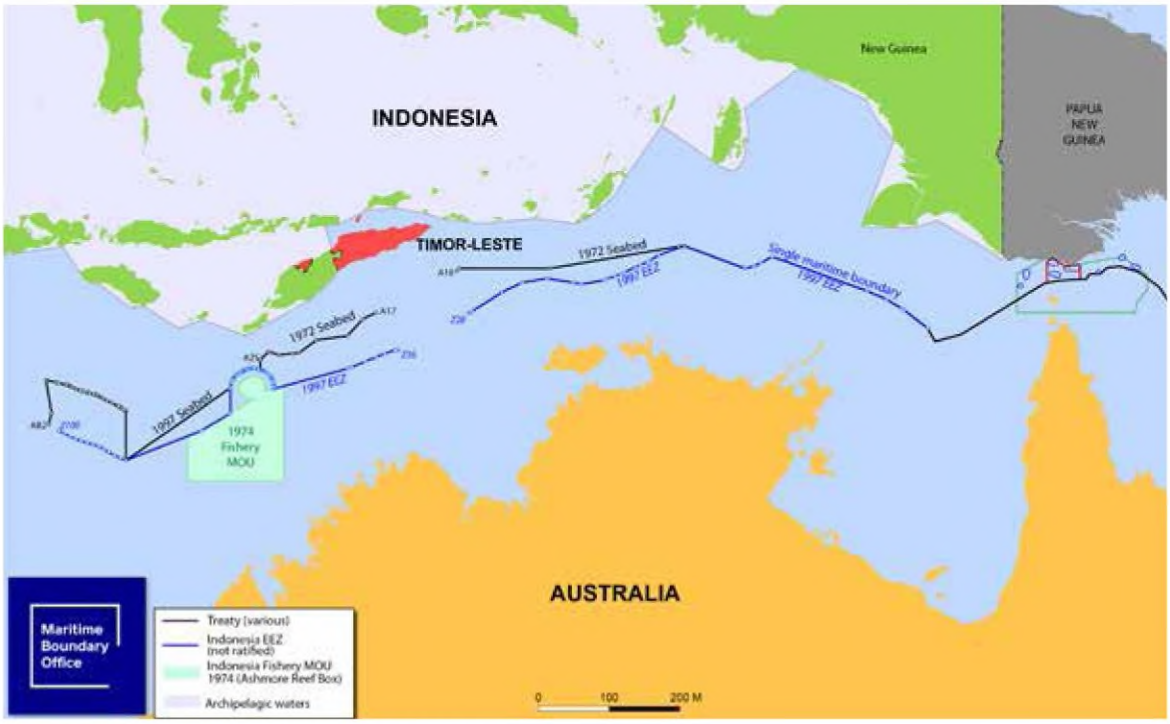
GLOSSARY

Median line (of a maritime boundary)	See *Equidistance line*.
National Petroleum and Minerals Authority	The Timor-Leste Government body (called 'Autoridade Nacional do Petróleo e Minerais') responsible for managing and regulating petroleum activities in waters near Timor-Leste and also in the Joint Petroleum Development Area. The National Petroleum and Minerals Authority reports to the Joint Commission, which comprises representatives from Australia and Timor-Leste.
Nautical mile	A unit of measurement used at sea. An international nautical mile is equal to 1,852 metres. A coastal State's exclusive economic zone may extend up to 200 nautical miles from its coastline.
Normal baselines	The low-water line (that is, the low tide line) is the normal baseline. Generally, the territorial sea is measured from this line and maritime boundary delimitation is usually constructed using physical base points on the normal baseline.
Permanent Court of Arbitration	A global institution which provides services for the resolution of international disputes between States, international organisations or private parties, including arbitration in maritime boundary disputes. The Permanent Court of Arbitration does not have sitting judges; the parties themselves appoint arbitrators. It is based in the Peace Palace at The Hague in the Netherlands.
Seabed	The ocean floor or the ground under the sea.
Sign (a treaty)	At the conclusion of negotiations, State representatives may sign the text of a treaty to indicate their State's intention to abide by a treaty. For most States, there is a further requirement that a treaty is ratified (given formal consent by the State), before the treaty becomes law.
Straight baselines	Where a country meets the criteria specified in UNCLOS, for example, by having a deeply indented coastline, a country may be allowed to draw a straight baseline from which to measure its territorial sea. This is in contrast to using the normal baselines from the low-water line as the baseline from which to measure a territorial sea.
Territorial sea	The territorial sea extends up to 12 nautical miles from a State's baselines (which are generally drawn along the low-water line of the coast). States have control of the airspace above their territorial sea, and over the water column, seabed and subsoil below.

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Timor Gap — The gap between the points A16 and A17 in the Timor Sea created by the 1972 Australia-Indonesia maritime boundary. The Joint Petroleum Development Area, which was created under the Timor Sea Treaty between Australia and Timor-Leste, is located within this 'gap'.



Map 11: Australia and Indonesia's maritime agreements

Timor Trough — The geological formation where the seabed south of Timor-Leste drops sharply and forms a trough or a trench.

Treaty — A formal, legally binding agreement between two or more States.

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United Nations Convention on the Law of the Sea (UNCLOS)	The main international agreement relating to the law of the sea. UNCLOS was finalised in 1982 and has been in force since 1994. UNCLOS is one of the most signed (and ratified) international treaties in the world.
Water column rights	Maritime rights to resources in the water column (i.e. what lies above the seabed) in a maritime area, such as fishing rights. Water column rights are different from seabed rights, which include the rights to extract oil and gas (as they are located in the seabed). For instance, in a certain area of sea between two countries, one country may have water column rights and the other country may have seabed rights. This means one country can fish in the area and the other country can extract oil and gas in the same area.
Without prejudice	Not affecting or something that cannot be used to a person's (or country's) detriment.

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APPENDIX 3: USEFUL RESOURCES

This appendix provides further information about Timor-Leste's historical pursuit of permanent maritime boundaries. The below appendix is not necessarily a complete list of all relevant sources. Please refer to the disclaimer on the inside cover of this publication.

Treaties

United Nations Convention on the Law of the Sea (1982) <http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>

Seabed Boundary Agreement between Australia and Indonesia (1972) <http://www.gfm.tl/wp-content/uploads/2015/11/1972-Maritime-Boundary.pdf>

Timor Gap Treaty between Australia and Indonesia (1989) (not in force) <http://www.gfm.tl/wp-content/uploads/2016/03/Timor-Gap-Treaty-reduced-size.pdf>

Exclusive Economic Zone Agreement between Australia and Indonesia (1997) (signed but not ratified) <http://www.gfm.tl/wp-content/uploads/2015/11/1997-EEZ-Agreement.pdf>

Timor Sea Treaty between Australia and Timor-Leste (2002) (now amended by CMATS) <http://www.gfm.tl/wp-content/uploads/2015/11/Timor-Sea-Treaty-TL-version.pdf>

International Unitisation Agreement between Australia and Timor-Leste (2003) <http://www.gfm.tl/wp-content/uploads/2015/11/IUA.pdf>

Certain Maritime Arrangements in the Timor Sea (CMATS) Agreement between Australia and Timor-Leste (2006) <http://www.gfm.tl/wp-content/uploads/2015/11/CMATS.pdf>

Legal Resources

United Nations Division for Ocean Affairs and the Law of the Sea <http://www.un.org/Depts/los/index.htm>

International Tribunal for the Law of the Sea <https://www.itlos.org/en/top/home>

United Nations Maritime Space Database <http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/index.htm>

Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v Australia), International Court of Justice <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&case=156>

Timor-Leste Government Resources

Government of Timor-Leste <http://timor-leste.gov.tl/?lang=en>

Maritime Boundary Office <http://www.gfm.tl>

- Conference Paper: Dili International Conference on Maritime Boundaries and the Law of the Sea <http://www.gfm.tl/wp-content/uploads/2015/11/Conference-Paper-ENG-PT-BOOKLET.pdf>
- Factsheet: Compulsory Conciliation <http://www.gfm.tl/wp-content/uploads/2016/04/Fact-sheet-Compulsory-Conciliation.pdf>
- Factsheet: Timor-Leste and its maritime boundaries <http://www.gfm.tl/wp-content/uploads/2016/03/One-Page-Fact-Sheet_ENG_FINAL2016.pdf>
- Factsheet (long form) <http://www.gfm.tl/wp-content/uploads/2015/11/MBO_Factsheet_v7_online_version.pdf>
- Government media releases related to maritime boundaries <http://www.gfm.tl/media/media-releases>

Law No. 7/2002 on Maritime Boundaries of the Territory of the Democratic Republic of Timor-Leste <http://mj.gov.tl/jornal/lawsTL/RDTL-Law/RDTL-Laws/Law-2002-07.pdf>

Strategic Development Plan 2011 - 2030 <http://timor-leste.gov.tl/?p=5289&lang=en>

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TIMOR GAP, E.P. <https://timorgap.com/databases/website.nsf/vwall/home>

National Petroleum and Minerals Authority <http://www.anp-tl.org>

Address by His Excellency Dr. Rui de Araújo, Dili International Conference: Maritime Boundaries and the Law of the Sea, Dili, 19 May 2016 <http://timor-leste.gov.tl/wp-content/uploads/2016/05/Dili-International-Conference_Maritime-Boundaries-and-the-Law-of-the-Sea_19.05.2016.pdf>

Addresses by His Excellency Dr. Rui de Araújo, His Excellency Xanana Gusmão and His Excellency Dr. Jose Ramos-Horta, International Peace Institute, New York, 1 October 2015 <http://www.gfm.tl/wp-content/uploads/2015/11/IPI-Speeches-booklet.pdf>

Books

"Shakedown: Australia's Grab for Timor Oil", Paul Cleary, Allen & Unwin, 2007 <https://www.allenandunwin.com/browse/books/general-books/current-affairs-politics/Shakedown-Paul-Cleary-9781741149265>

Academic Works

"A Study of the Offshore Petroleum Negotiations between Australia, the U.N. and East Timor (Thesis)", Australian National University, June 2006, Alexander J. Munton <https://digitalcollections.anu.edu.au/handle/1885/47992>

"The Timor Sea's Oil and Gas: What's Fair?", Australian Catholic Social Justice Series (No. 51), Father Frank Brennan <http://www.socialjustice.catholic.org.au/publications/series-papers?showall=1&limitstart=>

"Time to Draw the Line - Finding a Just Settlement Between Australia and Timor-Leste", Australian Catholic Social Justice Series (no. 74), Father Frank Brennan <http://www.socialjustice.catholic.org.au/publications/series-papers>

Articles

"The Conciliation Commission concludes first Procedural Meeting" (Press Release), Permanent Court of Arbitration, 29 July 2016 <http://pcacases.com/web/sendAttach/1813>

"Timor-Leste: The key to the South China Sea", American Security Project, 11 July 2016, Enya Gonzalez <https://www.americansecurityproject.org/timor-leste-key-to-the-south-china-sea>

"Timor-Leste blazing a trail for maritime dispute resolution", The Diplomat, 3 June 2016, Grace Phan <http://thediplomat.com/2016/06/timor-leste-blazing-a-trail-for-maritime-dispute-resolution>

"East Timor takes Australia to UN over sea border", Sydney Morning Herald, 11 April 2016, Tom Allard <http://www.smh.com.au/federal-politics/political-news/east-timor-takes-australia-to-un-over-sea-border-20160411-go39tl.html>

"East Timor-Australia maritime border to be negotiated before United Nations after protests", Australian Broadcasting Corporation, 11 April 2016, Matthew Doran and Peter Lloyd <http://www.abc.net.au/news/2016-04-11/east-timor-to-negotiate-maritime-border-with-australia-at-un/7316674>

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"Timor Sea boundary dispute: Australia is out of step with international best practice", The Lowy Interpreter, 9 March 2016, Steve Bracks <http://www.lowyinterpreter.org/post/2016/03/09/Timor-Sea-boundary-dispute-Australia-is-out-of-step-with-international-best-practice1.aspx>

"Protesters in Dili want Australia to settle oil dispute with East Timor", Sydney Morning Herald, 23 February 2016, Daniel Flitton <http://www.smh.com.au/federal-politics/political-news/protesters-in-dili-want-australia-to-settle-oil-dispute-with-east-timor-20160223-gn1dri.html>

"Labor vows to end Timor-Leste dispute over Greater Sunrise territory", Australian Financial Review, 11 February 2016, Fleur Anderson <http://www.afr.com/news/politics/labor-vows-to-end-timorleste-dispute-over-greater-sunrise-territory-20160210-gmq5n4>

"Malcolm Turnbull's foreign policy hypocrisy on East Timor", Sydney Morning Herald, 25 January 2016, Tom Allard <http://www.smh.com.au/federal-politics/political-opinion/malcolm-turnbulls-breathtaking-foreign-policy-hypocrisy-on-east-timor-20160124-gmcz7k.html>

"Oil and Water: Australia blurs the lines with Timor-Leste", The Monthly, December 2015, Mark Aarons <https://www.themonthly.com.au/issue/2015/december/1448888400/mark-aarons/oil-and-water>

"East Timor appealing for Australian public's support in border dispute, minister says", Australian Broadcasting Corporation, 17 November 2015 <http://www.abc.net.au/news/2015-11-17/east-timor-appeals-to-australian-public-in-border-dispute/6949604>

"Timor-Leste's battle to settle its maritime borders resumes", The Saturday Paper, 12 September 2015, Mark Skulley <https://www.thesaturdaypaper.com.au/news/law-crime/2015/09/12/timor-lestes-battle-settle-its-maritime-borders-resumes/14419800002368>

"Timor Sea policy a challenge for Labor", The Saturday Paper, 11 July 2015, Steve Bracks <https://www.thesaturdaypaper.com.au/topic/politics/2015/07/11/timor-sea-policy-challenge-labor/14365368002112>

"Oil, gas and spy games in the Timor Sea", The Monthly, April 2014, Kim McGrath <https://www.themonthly.com.au/issue/2014/april/1396270800/kim-mcgrath/oil-gas-and-spy-games-timor-sea>

Non-Government Organisations

Timor Sea Justice Campaign <http://www.timorseajustice.com>

Timor Sea Justice Forum <http://timfo.org/>

Australia East Timor Friendship Association <http://aetfa.org.au>

East Timor and Indonesia Action Network <http://www.etan.org>

La'o Hamutuk <http://www.laohamutuk.org>

The Movement Against the Occupation of the Timor Sea <https://web.facebook.com/MKOTT-Fight-for-Sovereignty-of-Timor-Leste-1525058754465951/?_rdr>

Other

Podcast: "What's Next? with H.E. Prime Minister Dr. Araújo of Timor-Leste", American Security Project, Maggie Feldman-Piltch, 12 July 2016 <http://www.americansecurityproject.org/whatsnextaraujo>

"Crocodiles in the Timor Sea: Development and socio-economic implications of the maritime resources dispute", Conference speech, 16 February 2016, Dr. Sara Niner <https://vimeo.com/155913942>

"Background information on 2004 Australia-New Zealand treaty", Former Australian Minister for Foreign Affairs, 25 July 2004 <http://www.gfm.tl/wp-content/uploads/2016/03/Aust-NZ-factsheet.pdf>

The Timor-Leste Commission for Reception, Truth and Reconciliation <http://www.cavr-timorleste.org/>

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ABOUT THE COUNCIL FOR THE FINAL DELIMITATION OF MARITIME BOUNDARIES

The Council for the Final Delimitation of Maritime Boundaries is the Government body which coordinates and manages Timor-Leste's maritime boundary agenda. Established in April 2015, the Council is led by the Prime Minister and the Chief Negotiator, with the advice of eminent past and present leaders of the nation. The overarching purpose and mandate of the Council is to achieve the final settlement of Timor-Leste's maritime boundaries in accordance with international law.

ABOUT THE MARITIME BOUNDARY OFFICE

The Maritime Boundary Office is the operational arm of the Council. It implements a whole-of-State approach to the issue of maritime boundaries, coordinating between relevant ministries and agencies. The Office supports the development of policy and strategy, facilitates communications and information on maritime boundary issues, and engages legal and technical experts. The Office has also established a library of informative resources and a website (www.gfm.tl) for those interested in learning more about the international law of the sea and Timor-Leste's pursuit of its maritime boundaries.

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