Submission No 71

Inquiry into Australia's Relationship with Timor-Leste

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Joint Standing Committee on Foreign Affairs, Defence and Trade
Foreign Affairs Sub-Committee

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Dr John Carter
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CRICOS Provider No. 00120C

Dear Dr Carter,

Australia's relationship with Timor-Leste

I attach a submission as part of the inquiry into Australia's Relationship with Timor-Leste. My submission relates to law of the sea issues in the Timor Sea.

I can indicate in advance that I would be available to appear before the Committee to answer questions relating to this submission and related matters.

Yours sincerely,

Donald R. Rothwell

Professor Donald R. Rothwell

Joint Standing Committee on Foreign Affairs, Defence and Trade

Australia's Relationship with Timor-Leste

Submission regarding bilateral relations, especially with respect to the Australia - Timor-Leste Maritime Boundary in the Timor Sea

May 2013

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Executive Summary

The dominant international legal instrument in the modern law of the sea is the 1982 United Nations Convention on the Law of the Sea (LOSC). Australia ratified the LOSC on 5 October 1994, and Timor-Leste acceded to the LOSC on 8 January 2013. The LOSC identified for the first time a minimum entitlement on the part of a coastal State to access the living and non-living resources of the Exclusive Economic Zone (EEZ) and continental shelf out to 200 nautical miles. This is an entitlement that all coastal States enjoy under the LOSC, irrespective of their size, history, or geopolitical power. In this respect, the LOSC emphasised principles of equitable entitlement to ocean space. Under the law of the sea principles have been developed for the delimitation of maritime boundaries between states which share access to a common maritime domain. Those principles have been adjusted over the past 40 years as the law of the sea has responded to the recognition of new maritime zones such as the EEZ and a new juridical definition of the continental shelf. States are encouraged under the LOSC to settle their maritime boundaries by agreement, and in the absence of agreement to enter into provisional arrangements of a temporary nature. Principles that once had great significance for maritime boundary delimitation, such as natural prolongation of the continental shelf, have diminished in significance as the International Court of Justice has developed modern principles of delimitation methodology in maritime boundary cases. Australia has entered into two maritime boundary treaties with Timor Leste: the 2002 Timor Sea Treaty and the 2006 Certain Maritime Arrangements in the Timor Sea (CMATS) Treaty. These treaties are provisional agreements and do not delimit a permanent maritime boundary in the Timor Sea but rather establish interim mechanisms by which joint development of petroleum resources can take place.

Introduction

This submission addresses issues relating to the Australia - Timor-Leste[1] maritime boundary in the Timor Sea. It does so by considering:

A. The entitlements under the law of the sea of Australia and Timor-Leste to assert maritime claims
B. The current international law regarding maritime boundary delimitation
C. The status of the current maritime boundary arrangements between Australia and Timor-Leste.

A. The entitlements under the law of the sea of Australia and Timor-Leste to assert maritime claims

1. The dominant international legal instrument with respect to the modern law of the sea is the 1982 United Nations Convention on the Law of the Sea (LOSC).[2] The LOSC has a total of 165 state parties and has been in force since 16 November 1994. Australia ratified the LOSC on 5 October 1994, and Timor-Leste acceded to the LOSC on 8 January 2013. Many of the key elements of the LOSC are considered to reflect customary international law, including core aspects of the regime of the exclusive economic zone (EEZ) and the continental shelf.
2. The LOSC resolved uncertainties that had existed during the 1960s as to the entitlements of a coastal State to a fisheries zone, and also as to the outer limits of the continental shelf. It did this by:
    a) Recognising the right of a coastal state to proclaim a 200 nautical mile (nm) EEZ which encompassed sovereign rights for the purpose of exploring and exploiting, and conserving and managing the living and non-living resources of the waters superjacent to the sea-bed and of the sea-bed and the subsoil; [3]
    b) Defining the continental shelf of a coastal State as comprising the sea-bed and the sub-soil of the submarine areas beyond the territorial sea to a

[1] Timor-Leste and East Timor are used interchangeably throughout.
[2] [1994] ATS 31.
[3] LOSC, Arts. 56, 57.

distance of 200 nm, and in certain instances beyond that distance in the case of where certain geological and geomorphological criteria are met. [4]

3. In the case of where two neighbouring coastal States had overlapping entitlements to these maritime zones, the LOSC provides a framework for the delimitation of maritime boundaries.
4. An important aspect of the LOSC with respect to these maritime zones is that it identified for the first time a minimum entitlement on the part of a coastal State to access the living and non-living resources of the EEZ and continental shelf out to 200 nm. This is an entitlement that all coastal States enjoy under the LOSC, irrespective of their size, history, or geopolitical power. In this respect, the LOSC emphasised principles of equitable entitlement to ocean space.
5. With respect to the continental shelf, an important distinction needs to be made between the LOSC and its provision of a 200 nm continental shelf, and the 1958 Convention on the Continental Shelf [5] which defined the area in terms of the submarine areas adjacent to a coastal State to a depth of 200 metres "or beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources…". [6] The international legal basis for determining the outer limits of a coastal State's continental shelf therefore shifted from an undefined limit in the 1958 Convention, to a clearly defined 'inner limit' under the LOSC of 200 nm.

B. The current international law regarding maritime boundary delimitation

6. Determining the contemporary principles of maritime boundary delimitation is made difficult by the imprecise terminology used in the LOSC. While there is considerable jurisprudence in the field the legal basis – in either treaty law or customary international law - upon which those judgments have been delivered has also been variable. Cases have been determined on the basis of customary international law, the Geneva Conventions, the LOSC, or a mixture of both custom and treaty law. During this time the jurisprudence has evolved, but so too has the international law of the sea as there has been a gradual transition from the Geneva Conventions to the LOSC with relevant

[4] LOSC, Art. 76.
[5] [1963] ATS 12.
[6] Convention on the Continental Shelf, Art 1.

customary international law on fisheries zones also bound up in that process. One of the most important impacts upon the law of maritime boundary delimitation during this time has been the changing nature of the juridical continental shelf. The emphasis upon 'natural prolongation' in the Convention on the Continental Shelf, reflected in submissions made in cases such as the 1979 *Anglo-French Arbitration,*[7] has now been replaced by an acceptance that geomorphology has less significance under the Article 76 regime granting all states a minimum 200 nm continental shelf. [8] International courts and tribunals have throughout this time been in search of objective criteria to apply in maritime boundary delimitation. [9] In light of their collective jurisprudence, state practice, and the delimitation methods laid down in Articles 15, 74 and 83 of the LOSC, it is now possible to identify with some degree of clarity the key characteristics of contemporary maritime boundary delimitation.

7. ***Delimitation Methodology***: As international courts and tribunals have become more experienced in dealing with maritime boundary delimitation they have been able to develop certain techniques to assist in applying the law. These techniques have become more sharply focused since the adoption of the LOSC and the jurisprudence on interpretation of Articles 74 and 83 has developed.
8. In the 2009 *Black Sea* case between Romania and Ukraine, [10] the court for the first time generically referred to a 'delimitation methodology' which could be applied in cases dealing with the delimitation of the EEZ, continental shelf, or a single maritime boundary line. [11] This approach involves three stages. The first stage is the establishment of a provisional delimitation line which in the case of adjacent coasts will be an equidistance line and in the case of opposite coasts a median line, [12] unless as occurred in *Caribbean Sea* there are compelling reasons which make such a line unsuitable. The second stage is a consideration as to whether there are any factors which call for an adjustment of the provisional line in order to achieve an equitable result. [13] Finally, and after having made any adjustments to the provisional line as a

[7] (1979) 18 ILM 397.
[8] *Barbados v Trinidad and Tobago Arbitration* (2006) 45 ILM 798 [224-226].
[9] Ibid [230].
[10] *Case Concerning Maritime Delimitation in the Black Sea* (Romania v Ukraine) Judgment [2009] ICJ Reports (Black Sea).
[11] *Black Sea* [115-122].
[12] Ibid [116].
[13] Ibid [120].

result of the second stage, the court will seek to verify that the line does not lead to an inequitable result "by reason of any marked disproportion between the ratio of the respective coastal lengths and the ratio between the relevant maritime area of each State by reference to the delimitation line." [14] This process thereby ensures that there is no great disproportionality between the division of the maritime area under delimitation and the relevant coastal lengths. A crucial element of this methodology is the determination of the 'relevant area' which the court has referred to as a 'legal concept'. [15] This area will depend upon the configuration of the relevant coasts within their geographical context and a consideration of the seaward projections of those coasts which will differ depending on whether a territorial sea or much longer maritime boundary is being delimited, and the interests of any third states. [16] Likewise, different considerations will apply in the case of convex and concave coastlines, significant indentations such as gulfs, and when islands are within the area of delimitation. [17] The determination of the relevant area is crucial for the application of proportionality which is undertaken at the third stage of the delimitation process. [18] Accordingly, a court will need to make a determination as to the relevant area under consideration prior to commencing the process of delimiting a boundary line. This approach has been recently followed in the 2012 decision of the International Court of Justice (ICJ) in Nicaragua v Colombia. [19]

9. ***Equitable result***: The adoption of Articles 74 and 83 of the LOSC ushered in a new era in maritime boundary delimitation with respect to the longest and most significant of the boundaries coastal states delimit. In distinction to the methodology formulated in Article 6 of the Convention on the Continental Shelf, with its technical distinction between opposite and adjacent states and reliance upon equidistance, the LOSC dispensed with this approach in favour of applying general international law as reflected in Article 38 of the Statute of the International Court of Justice in order to reach an equitable solution which is also often referred to as an 'equitable result'. [20] This invites states engaged in boundary delimitation, and the courts and tribunals engaged in

[14] Ibid [122].
[15] Ibid [110].
[16] *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea* (Nicaragua v Honduras) [2007] ICJ Reports [262].
[17] *Black Sea* [110].
[18] Ibid [110].
[19] *Territorial and Maritime Dispute* (Nicaragua v Colombia) [2012] ICJ Reports.
[20] *Black Sea* [120].

adjudication, to refer to the rich variety of sources of international law in order to achieve the desired outcome. Nevertheless, as was observed in the 1999 *Eritrea/Yemen Arbitration*, though Articles 74 and 83 were "designed to decide as little as possible" it was clear "that both Articles envisage an equitable result."[21]

10. The ICJ in the *Tunisia/Libya Continental Shelf* case gave initial guidance as to how this may be achieved, emphasising the importance of taking into account the relevant circumstances of the case. [22] This approach has been duplicated in subsequent decisions and is illustrated by consideration given to a wide range of relevant geographic factors in order to ensure they are taken into account in the final delimitation lines. There are constraints faced though in seeking to achieve an equitable result, and as was noted in the *Barbados v Trinidad and Tobago Arbitration* legal principle needs to be accounted for "in particular in respect of the factors that may be taken into account", including that of the decided cases. [23] However, the ICJ has drawn a distinction between achieving an equitable result and "delimiting in equity". In the 2002 *Cameroon/Nigeria* case it was observed that "The Court's jurisprudence shows that, in disputes relating to maritime delimitation, equity is not a method of delimitation, but solely an aim that should be borne in mind in effecting delimitation." [24] A common method used to achieve an equitable result/solution is an adjustment to the maritime boundary after the second stage of the delimitation process in order to ensure proportionality. [25]
11. ***Equidistance***: It is clear from the development of the law and the decisions of the ICJ, [26] that the principle of equidistance which was so influential in the initial development of the international law on maritime boundary delimitation no longer holds that dominant position. This is due to the distorting effect that an equidistance line may have upon the direction of a maritime boundary the further that boundary extends from the coast and its inability to address

[21] *Eritrea v Yemen*, Award of the Arbitral Tribunal in the Second Stage of the Proceedings (Maritime Delimitation), 17 December 1999 [116] [Eritrea/Yemen Arbitration].
[22] *Tunisia/Libya Continental Shelf* [1982] ICJ Reports 18 [72].
[23] *Barbados v Trinidad and Tobago Arbitration* [243]; see also the discussion in Barbara Kwiatkowska, 'The 2006 Barbados/Trinidad and Tobago Award: A Landmark in Compulsory Jurisdiction and Equitable Maritime Boundary Delimitation' (2007) 22 *International Journal of Marine and Coastal Law* 7, 38-43.
[24] *Cameroon/Nigeria* [2002] ICJ Reports 303 [294].
[25] *Black Sea* [2009] ICJ Reports [122]; *Libya/Malta Continental Shelf* [1985] ICJ Reports 13 [71].
[26] See especially *North Sea Continental Shelf* [1969] ICJ Reports 3 [46-56] rejecting equidistance.

certain geographical features. [27] In some instances, as occurred in *Caribbean Sea*, there may be a number of geological or geomorphological factors which make it impossible to even plot an equidistance line because of the absence of viable basepoints. [28] Nevertheless, equidistance and median lines have retained a central place in maritime boundary delimitation law and practice as reflected in both the LOSC, decisions of the courts and tribunals, and state practice. [29]

12. Notwithstanding some different approaches taken by courts and tribunals as to the relevance of an equidistance/median line, [30] there remain contemporary examples of where an equidistance/median line has been applied as a provisional line only to have been modified or adjusted in order to achieve an equitable solution. [31] This approach was endorsed by the ICJ as the first stage of a boundary delimitation in the 2009 *Black Sea* decision when the court upheld this approach. [32] In some instances, as occurred in the *Cameroon/Nigeria* case, [33] or the *Guyana/Suriname Arbitration*, [34] a conclusion may even be reached that an equidistance line represents an equitable result and that no circumstances exist which require modification of the line. There is also significant state practice to the effect that where maritime boundaries have been settled by agreement, states have relied upon a partial equidistance line, modified equidistance line, or in some cases a line drawn only by reference to equidistance. [35]
13. ***Relevant and Special Circumstances***: A feature of the law of maritime boundary delimitation has been the ongoing reference to 'special

[27] *North Sea Continental Shelf* [1969] ICJ Reports 3 [59].
[28] *Caribbean Sea* [281].
[29] Alex G Oude Elferink, 'Maritime Delimitation Between Denmark/Greenland and Norway' (2007) 38 *Ocean Development and International Law* 375 referring to the use of a median line in the delimitation of the maritime boundary between Denmark and Norway in the area between Greenland and Svalbard.
[30] *Delimitation of the Maritime Boundary in the Gulf of Maine Area* (Canada/United States) [1984] ICJ Reports 246 [107].
[31] *Barbados v Trinidad and Tobago Arbitration* [350]; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahrain) Merits, Judgment [2001] ICJ Reports 40 [230];
[32] *Black Sea* [116], where it was also observed that "No legal consequences flow from the use of the terms 'median line' and 'equidistance line' since the method of delimitation is the same for both".
[33] *Cameroon/Nigeria* [306].
[34] *Guyana/Suriname Arbitration* (17 September 2007) [392].
[35] An example can be found in the 2004 Treaty between the Government of Australia and the Government of New Zealand Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries [2006] ATS 4, in which the Australian government 'National Interest Analysis' associated with this treaty makes direct reference to the use of equidistance: [2004] ATNIA 8.

circumstances' as factors to be taken into account when not strictly adhering to an equidistance or median line. Reference to special circumstances appeared in the Geneva Conventions and was noted in the early boundary cases. Whilst now only expressly referred to in the context of territorial sea delimitations, the relevant criteria which make up special circumstances have had ongoing influence. Recently, the international courts have also begun referring to 'relevant circumstances'.

14. In the early jurisprudence, natural prolongation of the continental shelf was a factor that was often considered in continental shelf delimitations, [36] however, with the redefinition of the juridicial continental shelf under Article 76 to encompass a minimum seabed limit of 200 nm, this factor has faded from influence. [37] Even with contemporary delimitations of outer continental shelf boundaries, natural prolongation will not resurface as a factor to be taken into account as each state must be able to substantiate their claims to a continental shelf beyond 200nm based on the Article 76 criteria.
15. In recent cases the international courts and tribunals have begun to refer to the concept of 'relevant circumstances'. In the *Barbados/Trinidad and Tobago Arbitration* the tribunal noted that 'The identification of the relevant circumstances becomes accordingly a necessary step in determining the approach to delimitation' [38] and this refers to an identification of the maritime domain, particularly geographical features such as the length and configuration of the respective coastlines. Likewise, in the *Black Sea* case, the ICJ referred to identification of the 'relevant maritime area' as being an essential aspect of the delimitation process. [39] This step encompasses not only a physical identification of the outer limits of the area under delimitation but also relevant circumstances within that area which may be important in the delimitation process. Accordingly, the length of the relevant coastal fronts, their general direction and configuration, and associated coastal and geographic features such as islands, reefs, atolls, bays and peninsulas will need to be identified. [40] Whether 'relevant circumstances' are then considered to be 'special circumstances' that need to be accounted for in the delimitation process will become a matter for determination.

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[36] *Anglo-French Arbitration* [107-110]; *Libya/Malta Continental Shelf* [1985] ICJ Reports 13 [39-41]; Malcolm D Evans, *Relevant Circumstances and Maritime Delimitation* (Oxford, Clarendon Press, 1989) 99-118.
[37] *Barbados v Trinidad and Tobago Arbitration* [224].
[38] Ibid [233].
[39] *Black Sea* [106-114].
[40] *Cameroon/Nigeria* [290]; *Caribbean Sea* [132-227].

16. ***Oil Concessions***: In areas of disputed continental shelf, consideration has been given in a number of cases to the impact of 'oil concessions' involving the issuing of licences for petroleum exploration and exploitation. [41] This will be an inevitable issue in instances of where there have been delays in reaching agreement on a final delimitation of a maritime boundary during which time the parties have issued licences for exploration and exploitation of oil and gas within the area of continental shelf that is the subject of delimitation. [42] In the *Cameroon/Nigeria* case, Nigeria asked the ICJ to take into account oil concessions which had been granted in the area under delimitation. The court reviewed the relevant jurisprudence and noted that 'although the existence of an express or tacit agreement between the parties on the siting of their respective oil concessions may indicate a consensus on the maritime areas to which they are entitled' they were not to be considered a relevant circumstance that would justify the shifting of a provisional delimitation line. [43] Only in instances of where concessions were 'based on express or tacit consent between the parties' [44] would they be taken into account. This approach was endorsed by the tribunal in the *Guyana/Suriname Arbitration*. [45]
17. ***Settled Maritime Boundaries***: Notwithstanding the reliance by some states upon formal dispute resolution processes for the settlement of their overlapping maritime claims with neighbouring states, Articles 74 and 83 of the LOSC make clear that states are to engage in delimitation by agreement. This process can be effected directly by negotiation between the parties, or they may elect to refer the matter to a third party for mediation, conciliation, arbitration or adjudication consistent with the mechanisms available to them under Part XV of the LOSC. If the states elect to settle their boundaries bilaterally by agreement then they have open to them a great array of options to accommodate their individual and joint interests in the maritime area under consideration. [46] This has resulted in some particularly innovative approaches, often brought about by particular geographic, historical and other

[41] *Tunisia/Libya Continental Shelf* [1982] ICJ Reports 18 [129]; *Gulf of Maine* [149-152];
[42] This is an issue for Canada and the United States in the area of the Beaufort Sea where the maritime boundary has yet to be delimited: McDorman, *Salt Water Neighbours* (Oxford: 2009) 187.
[43] *Cameroon/Nigeria* [304].
[44] Ibid [304] where the ICJ found that there was no agreement to that effect.
[45] *Guyana/Suriname Arbitration* [390].
[46] See the exhaustive analysis of state practice contained in Jonathan I. Charney et al (eds), *International Maritime Boundaries* Vols 1-5 (Martinus Nijhoff: 1993-2005).

factors at play. For example, in the Torres Strait Treaty between Australia and Papua New Guinea allowance was made for a protected zone in the middle of the boundary which took into account the interests of the indigenous peoples of the area, including their traditional fishing practices and their movement between the islands within the strait. [47]

18. What has occurred as a result of these bilateral boundary delimitations is somewhat variable state practice which has reflected different stages in the development of the international law of the sea. Accordingly, some maritime boundaries delimited via these processes prior to the conclusion of the LOSC appear inconsistent not only with contemporary delimitation practices but also the current law regarding entitlements to maritime claims. Examples can be found in continental shelf/seabed boundaries having been settled by agreement based on pre-LOSC legal criteria in which distinctive continental shelf features were decisive at the time. [48] Nevertheless, consistent with the provisions of international treaty law, these boundaries remain in place.

C. The status of the current maritime boundary arrangements between Australia and Timor-Leste

19. In 1989 Australia concluded with Indonesia the so-called 'Timor Gap Treaty'. [49] The treaty dealt with a disputed area of continental shelf over which Australia and Indonesia had been unable to reach a permanent settlement due to differing interpretations on the law of the sea and their heightened interest in the resource potential of the area. Accordingly, the area in dispute was delimited as a 'Zone of Cooperation' to encompass the outer points of each State's respective 200 nm continental shelf claims and some related areas, and then divided into Areas A, B and C. Within Area A – the central area – revenue was equally shared between Australia and Indonesia, whilst in Areas B and C the revenue was based on a 90/10 split with the northern area in favour of Indonesia and the southern area in favour of Australia. The management of the zone of cooperation was undertaken on a daily basis by a Joint Authority with oversight by a Ministerial Council. The treaty importantly

[47] 1978 Treaty concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including in the Area known as the Torres Strait, and Related Matters, arts 10-16.
[48] This particularly applies in the case of the Australian/Indonesia maritime boundaries in the Timor Sea and Indian Ocean; RD Lumb, 'The Delimitation of Maritime Boundaries in the Timor Sea' [1981] 7 *Australian Year Book of International Law* 72.
[49] 1989 Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia [1991] ATS 9.

provided in Article 3 that nothing which occurred whilst it was in force "shall be interpreted as prejudicing the position of either Contracting State on a permanent continental shelf delimitation" and was not to affect the sovereign rights of either state within the area.

20. These arrangements lapsed following the Indonesian withdrawal from East Timor in October 1999, however were revived through an Exchange of Notes entered into between Australia and the United Nations Transitional Administration in East Timor (UNTAET), [50] which permitted the ongoing operation of the joint development regime until Timor Leste achieved independence in 2002.
21. ***Timor Sea Treaty***: In 2002 Australia and East Timor concluded negotiations for the Timor Sea Treaty which was signed in Dili on 20 May 2002 and entered into force on 2 April 2003. [51] The Timor Sea Treaty sought to duplicate three key elements of the previous Timor Gap Treaty. The first was that it established a joint development regime for the Timor Sea. The second was that the joint development regime, which applied in a designated 'Joint Petroleum Development Area' (JPDA), duplicated Area A of the previous Timor Gap Treaty. The third was that the Timor Sea Treaty was designed to be 'sovereign neutral' in that nothing contained within the Treaty was to be considered as affecting either East Timor's or Australia's position with respect to seabed delimitation and their respective seabed entitlements. A significant difference, however, from the Timor Gap Treaty, was the sharing of the petroleum production benefits under which 90 per cent were to belong to East Timor and 10 per cent were to belong to Australia. [52] The Treaty was to remain in force for a period of 30 years, or until such time as a permanent seabed delimitation was reached between Australia and East Timor. [53]
22. ***CMATS Treaty***: Subsequently Australia and Timor-Leste reached agreement on the 2006 Treaty between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea, which is commonly referred to as the

[50] Exchange of Notes constituting an Agreement between the Government of Australia and the United Nations Transitional Administration in East Timor (UNTAET) concerning the continued Operation of the Treaty between Australia and the Republic of Indonesia on the Zone of Cooperation in an Area between the Indonesian Province of East Timor and Northern Australia of 11 December 1989 [2000] ATS 9.
[51] 2002 Timor Sea Treaty between the Government of East Timor and Government of Australia [2003] ATS 13; 2006 Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea [2007] ATS 12.
[52] Timor Sea Treaty, Art 4.
[53] Timor Sea Treaty, Art 22.

CMATS Treaty. [54] The CMATS Treaty addresses a number of issues, some of which were outstanding following the conclusion of the Timor Sea Treaty in 2002, and others which had arisen during the interim period.

23. The following general observations can be made with respect to the CMATS Treaty. The first is that rather unusually for a general treaty it amends the Timor Sea Treaty by substitution of Article 22 of that Treaty with new text by which the Timor Sea Treaty remains in force for the same duration as the CMATS Treaty. In that regard subject to certain provisions the CMATS Treaty shall remain in force for 50 years from the date of its entry into force which would see the Treaty expire in 2057.[55] The second is that the CMATS Treaty places significant limitations on the capacity of Australia and Timor-Leste to pursue against each other their sovereign rights and jurisdiction and maritime boundaries for the period of the Treaty.[56] This extends to limitations on the capacity of a court, tribunal, or other dispute settlement body from hearing a matter with respect to the maritime boundaries of both States in the Timor Sea.[57] The third is that the Treaty provides for the equal division of the production revenues within a named 'Unit Area' so far as that relates to the upstream exploitation of that revenue.[58] This 'Unit Area' falls within the boundary of the 2003 Agreement between the Government of Australia and the Government of the Democratic Republic of Timor-Leste Relating to the Unitisation of the Sunrise and Troubadour Fields. [59]

7 May 2013

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[54] [2007] ATS 12.
[55] CMATS, Art 12.
[56] CMATS, Art 4.
[57] CMATS, Art 4(5).
[58] CMATS, Art 5.
[59] [2007] ATS 11.