

Annex 12:
Commission's Proposal on Confidence-Building Measures of
14 October 2016

CONCILIATION BETWEEN TIMOR-LESTE AND AUSTRALIA

COMMISSION PROPOSAL ON CONFIDENCE-BUILDING MEASURES

The Commission has carefully considered how best to move forward with the Conciliation process and create the conditions most conducive to achieving an agreement on permanent maritime boundaries within the timeframe of the Conciliation process. In this respect, the Commission proposes to the Parties certain measures to be implemented with a view to removing obstacles to progress, establishing a stable starting point for negotiations, and building trust between the Parties. If these measures are implemented by the Parties, the Commission is optimistic about obtaining full engagement to begin substantive negotiations on both provisional and final solutions on maritime boundaries at the Commission's next meetings with the Parties in January of next year.

As a general matter, the Commission places great importance on maintaining stability in the relationship between the Parties during the course of this Conciliation. Accordingly, as alluded to in its letter of 21 September 2016, the Commission initially thought that it would be helpful to maintain all the current treaty arrangements during the pendency of the process. However, based on its discussions with the Parties, it appears that CMATS may remain an obstacle to moving forward that could be productively removed from the equation.

Timor-Leste had previously indicated that it intends to proceed with the termination of CMATS in the near future. Australia does not dispute that Timor-Leste has the right to terminate CMATS. At the same time, both States share a common interest in maintaining regulatory stability and investor confidence by clarifying that the Timor Sea Treaty would continue to apply to activities undertaken in the Timor Sea following termination of CMATS and serve as part of the transitional arrangements until a final delimitation of maritime boundaries has come into effect.

With the above in mind, the Commission proposes that the Parties take the following steps as confidence building measures:

1. Steps to be taken with respect to CMATS:

- Either:
 - **Both Parties** to agree by 8 December 2016 to terminate CMATS by mutual consent, with such termination taking place according to an agreed schedule, bearing in mind domestic legal processes; or
 - **Timor-Leste** to initiate termination of CMATS unilaterally by 15 January 2017 (i.e., one day prior to the opening of the January session with the Commission) and **Australia** to take note of Timor-Leste's termination of CMATS;
- **Both Parties** to agree that, following the termination of CMATS, the Timor Sea Treaty will apply in its original form, prior to amendment by CMATS;
- **Both Parties** to agree that Articles 12(3) and 12(4) of CMATS would no longer apply;
- **Australia** to confirm that, following termination of CMATS, Article 4(5) of CMATS would not limit or exclude its obligation to negotiate an agreement with Timor-Leste on the basis of any report the Commission may produce in the course of these proceedings;

2. The Parties' commitment to negotiate maritime boundaries

- **Australia** and **Timor-Leste** to commit to negotiate permanent maritime boundaries; such commitment to be formally confirmed in writing to the Commission by each government by 8 December 2016;

3. Steps to be taken with respect to pending arbitrations:

- **Both Parties** to write jointly, by 21 October 2016, to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration*, suspending those proceedings by agreement until 20 January 2017 (i.e., the final day of the January session with the Commission);
- **Timor-Leste** to write to the respective tribunals in the *Timor Sea Treaty Arbitration* and the *Article 8(b) Arbitration* by 20 January 2017 (i.e., the final day of the January session with the Commission), withdrawing its claims and requesting termination of those proceedings;

4. Steps to be taken with respect to petroleum exploration in the Timor Sea:

- **Australia** to remove the area in the recent acreage release identified by Timor-Leste as covered by its claim; such removal to be confirmed to the Commission in writing by 8 December 2016;

5. Steps to be taken with respect to the further work of the Commission:

- **Both Parties** to set out their positions on maritime boundaries in the Timor Sea in written submissions not exceeding 30 pages (excluding annexes), to be received by 20 December 2016; such written submissions should include the Parties' respective positions on the delimitation of permanent maritime boundaries (including coordinates of the proposed delimitation line) and an explanation of the principles on which their delimitation is based;
- **Australia** to provide the necessary mandate for its delegation to negotiate permanent maritime boundaries in the Timor Sea and to confirm to the Commission in writing the possession of such mandate by 9 January 2017;
- **Both Parties** to take a forward-looking approach to the negotiations and to raise only issues that are directly relevant to reaching an agreement on maritime boundaries.

6. Steps to be taken with respect to public communications:

- **Both Parties** to approach public statements on the issue of maritime boundaries and their relationship with one another generally with a view to creating space for constructive engagement, rather than to generate pressure on the other Party or foreclose options; Accordingly, **both Parties** to generally express optimism about the Conciliation process;
- **Both Parties** to provide positive comments from senior members of their present delegations on the other Party's engagement in the Conciliation process for quotation in a press release to be issued by the PCA at the close of the present session with the Commission;
- **Both Parties** to issue a joint statement (the content of which will be developed in consultation with the Commission) concurrent with the termination of CMATS, outlining the effect of termination on the Timor Sea Treaty and operators in the Timor Sea;

ANNEX: TIMELINE

Date	Event
Friday, 21 October 2016	Parties to write jointly to the respective tribunals in the <i>Timor Sea Treaty Arbitration</i> and the <i>Article 8(b) Arbitration</i> , suspending those proceedings by agreement until 20 January 2017
Thursday, 8 December 2016	Each government to write formally to the Commission, confirming commitment to negotiate permanent maritime boundaries
Thursday, 8 December 2016	Australia to advise Commission whether CMATS is to be terminated by Agreement
Thursday, 8 December 2016	Australia to confirm to the Commission that it has taken steps to remove the area in the recent acreage release identified by Timor-Leste as covered by its claim
Mid-December 2016	Parties and Commission to agree on trilateral Joint Statement (to be issued concurrently by each government and by the Commission at the same time that the termination of CMATS is initiated (either by agreement or unilaterally)) on modalities of termination of CMATS and continued application of Timor Sea Treaty as a transitional arrangement
Tuesday, 20 December 2016	Parties to simultaneously submit written statements to the Registry; Registry to circulate statements after receipt from both Parties
Monday, 9 January 2017	Australia to confirm to the Commission that it has a mandate to negotiate permanent maritime boundaries
Sunday, 15 January 2017	If CMATS to be terminated unilaterally, Timor-Leste to initiate termination process
Monday, 16 January 2017 to Friday, 20 January 2017	Confidential Meetings between the Parties and the Commission
Friday, 20 January 2017	Timor-Leste to write to the respective tribunals in the <i>Timor Sea Treaty Arbitration</i> and the <i>Article 8(b) Arbitration</i> by 20 January 2017, withdrawing its claims and requesting termination of those proceedings
Monday, 27 March 2017 to Friday, 31 March 2017	Confidential Meetings between the Parties and the Commission
Tuesday, 6 June 2017 to Friday, 9 June 2017	Confidential Meetings between the Parties and the Commission
Monday, 24 July 2017 to Friday, 28 July 2017	Confidential Meetings between the Parties and the Commission
Monday, 28 August 2017 to Friday, 1 September 2017	Confidential Meetings between the Parties and the Commission
Monday, 11 September 2017 to Friday, 15 September 2017	Dates reserved by Commission for purpose TBD