



CONCILIATION BETWEEN AUSTRALIA AND TIMOR-LESTE

IN 2016 TIMOR-LESTE COMMENCED CONCILIATION PROCEEDINGS UNDER ARTICLE 298 AND ANNEX V OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA TO CONCILIATE DIFFERENCES WITH AUSTRALIA ON MARITIME BOUNDARIES IN THE TIMOR SEA. AUSTRALIA IS ENGAGING IN THE CONCILIATION IN GOOD FAITH, IN ACCORDANCE WITH OUR INTERNATIONAL OBLIGATIONS.

WHAT IS CONCILIATION UNDER UNCLOS?

Conciliation is one of the methods available under the *UN Convention on the Law of the Sea* (UNCLOS) to assist countries to resolve their disputes. The function of conciliation is to assist parties to reach an amicable settlement – in other words, to reach an agreement. Australia is engaging in the conciliation with Timor-Leste in good faith, in accordance with our international obligations.

WHAT IS THE CONCILIATION COMMISSION?

The conciliation is conducted by a five-person Conciliation Commission. The Commission is an ad hoc body formed solely for the purpose of conducting the conciliation process. Australia and Timor-Leste appointed two commissioners each. These four Commissioners then chose the Chair. The five Commissioners are: HE Ambassador Peter Taksøe-Jensen (Denmark) (Chair), Dr Rosalie Balkin (Australia), Judge Abdul G. Koroma (Sierra Leone), Professor Donald McRae (Canada and New Zealand), and Judge Rüdiger Wolfrum (Germany).

The Commission has no geographical ties to The Hague and is free to convene in any location agreed with the Parties.

WHAT IS THE DIFFERENCE BETWEEN CONCILIATION AND ARBITRATION?

Arbitration and conciliation are both dispute settlement mechanisms under UNCLOS, but they differ in important respects. An arbitration is a formal process, with countries arguing their case before an Arbitral Tribunal. The Tribunal makes a decision which is legally binding on the parties.

By contrast, the function of conciliation is to assist countries resolve their dispute amicably, rather than adjudicate between the parties. The Conciliation Commission engages with the parties and may make proposals and recommendations for the particular conciliation, and its final report is not legally binding.

WHAT ROLE DOES THE PERMANENT COURT OF ARBITRATION PLAY?

The Permanent Court of Arbitration (PCA) provides administrative support to the Commission to conduct the conciliation. The PCA does not act as a court or make decisions in the conciliation. The Conciliation Commission is not a part of the Permanent Court of Arbitration or any other court or tribunal. More information about the PCA can be found at www.pca-cpa.org.

WHAT ARE THE NEXT STEPS?

The Commission found that it had jurisdiction to conduct the conciliation under UNCLOS. Australia accepts the Commission's decision and is engaging in good faith in the process. The Commission has advised it will hold a series of meetings with the parties over the course of the next year, largely in a confidential setting, in order to provide an environment conducive to facilitating the eventual success of the conciliation process.