

RESOLVING MARITIME DISPUTES: TIMOR-LESTE'S MARITIME DIPLOMACY

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ABSTRACT

While discussing Timor-Leste's maritime dispute with Australia, its diplomatic journey shows a multifaceted endeavour rooted in historical and geopolitical dynamics. From its tedious path to independence, both from Portuguese colonial rule and Indonesian occupation, to negotiating its resources with Australia, Timor-Leste has used diplomacy and pragmatic compromises to varying degrees. The historical context of colonization and oppression shows the significance of maritime boundaries in not only accessing resources, but also to attain sovereignty. This paper discusses Timor-Leste's foreign policy strategies in the context of determining its maritime borders, which includes an interplay between legal arguments and diplomatic strategies along with compromises such as the Certain Maritime Arrangements in the Timor Sea. It highlights the shift from the pragmatic approaches of José Ramos-Horta to the nationalistic stance adopted later by Xanana Gusmão. Finally, the use of public diplomacy by Timor-Leste to garner international support is discussed.

KEYWORDS

Public Diplomacy, Foreign Policy, Maritime Border Disputes, UNCLOS, Timor-Leste

1. INTRODUCTION

Timor-Leste is a young country in Southeast Asia, situated between Australia and Indonesia. Its peaceful resolution of maritime disputes with Australia, came to being as the first-ever compulsory conciliation process. Its use of international law to resolve the disputes demonstrates to other young nations the potential to use this as a mechanism of dispute resolution. In the 1970s, when Indonesia and Australia were negotiating their maritime boundaries, Portugal, Timor-Leste's then colonizing power, refused to participate in the United Nations Convention on the Law of the Sea (UNCLOS, 1982) negotiations. So, when Indonesia occupied Timor-Leste, Australia recognized Indonesian rule of Timor-Leste, since this meant that most of the oil reserves were placed on Australia's side of the border. Timor-Leste's maritime boundaries with Australia has been a widely contested issue which resulted in Timor-Leste initiating a compulsory non-binding conciliation proceeding against Australia as per Annex V of the UNCLOS. This provision states, "If the parties to a dispute have agreed, in accordance with article 284, to submit it to conciliation under this section, any such party may institute the proceedings by written notification addressed to the other party or parties to the dispute."

This can be seen as an achievement for Timor-Leste, due to its use of international mechanisms to resolve disputes. Timor-Leste used international law to leverage a better position for the resources in the Timor Gap (Strating, 2017). It referred to the United Nations Convention on the Law of the Sea (UNCLOS) so that it could arrive at a fair solution.

It must be addressed that, especially in post-colonial states such as Timor-Leste, sovereignty claims involve not only concerns over material resources but also ideational “symbolic” politics that link “maritime spaces to national identity and position sea territory as necessary for completing sovereignty and independence (Strating, 2018, p.102).” Such sentiments can be seen in Timor-Leste’s public diplomacy campaigns. As Tseng argues, maritime disputes are tied to the formation of modern states in Southeast Asia (Tseng, 2017). Alessio Patalano says that UNCLOS has provided countries with “previously unavailable ammunition,” so that political value can be given to border issues (Patalano, 2013). This is the main motivation for Timor-Leste to use public diplomacy and international law to assert their maritime boundaries. However, it cannot be said that sovereignty is the only reason; as a young nation, it heavily relied on gas revenues. Comparing the possibilities of outright conflicts at sea over maritime boundaries with land borders, an interesting paradox appears: Even though the chances are low, the political, economic, and historic interests in the same boundaries have made it difficult for states to agree in bilateral negotiations (Østhagen, 2020). Australia and Timor-Leste are a clear demonstration of this, especially from Australia’s side, since Australia tried to stick to the terms of previous agreements signed. Additionally, both parties stuck to strictly legal arguments initially.

The relevance of this geopolitical essay is determined by a need to study the potential uses of public diplomacy and international mechanisms by small states to resolve maritime disputes, regardless of it being less powerful. This essay will discuss how Timor-Leste used different tools of diplomacy and international law to resolve its maritime dispute. Timor-Leste is a clear-cut case that, despite smaller and younger nations having inadequate resources to enforce sovereignty through hard powers, the use of soft powers can be used to balance this out. It discusses the different narratives in public diplomacy used by Timor-Leste, to gain support from the international community. This essay will touch upon how negotiated agreements are better than formal arbitrations, due to the political nature of maritime disputes, especially among nations with unequal power. The object of the study are the various factors which led to Timor-Leste having to resort to public diplomacy to gain international support and using international mechanisms to claim sovereignty and rights over its maritime resources.

2. HISTORICAL CONTEXT

During the Treaty between Australia and the Democratic Republic of Timor-Leste on Certain Maritime Arrangements in the Timor Sea (CMATS) negotiations, José Ramos-Horta, the then-Prime Minister of Timor-Leste, seems to have adopted a pragmatic realist approach (ABC, 2005), which was later met with criticism by his opposition, Xanana Gusmão, who had a more nationalistic stance, saying that Timor-Leste should have sovereignty and control over the gas fields. The CMATS agreement notably put on hold the right of both countries to claim permanent maritime boundaries or engage in legal processes for fifty years. Although Ramos-Horta’s approach has been said by some to “reflect the importance of compromise and negotiation in international disputes (Ramos-Horta, 2014),” most other Timorese leaders have a unified opinion that maritime boundaries are necessary (Brennan, 2013). Timorese leaders sought to establish three aims: securing permanent maritime boundaries, taking possession of Sunrise and establishing an export pipeline (Strating, 2017). The first of these is even echoed in the Timorese National Parliament Resolution 12/2014, which states, “The definitive delimitation of maritime boundaries between the two countries is the only acceptable solution, in that it meets the aspirations of its people and is the only solution capable of enabling the full economic development of the nation.”

3. OWNERSHIP OF MARITIME RESOURCES AND INTERNATIONAL LAW

The question of ‘who owns what’ at sea is the basis of maritime boundary disputes (Østhagen, 2020). Prescott has identified two reasons why states use oceans: to improve security and the opportunity for development (Prescott, 1975). After gaining independence, Timor-Leste began to extract oil from the Bayu-Undan field. This made it dependent on oil revenues. Territorial disputes usually include two states disagreeing on borders, in two manners: either one state does not recognize the sovereignty of another state, or a state does not recognize the independence and sovereignty of seceding state. Timor-Leste’s case is a unique one, if this idea is applied, since it is a seceding state, not of Australia, but of Indonesia. However, Australia was complicit during the Indonesian occupation of Timor-Leste, hence not recognizing the sovereignty of Timor-Leste. Strating applies the concept of “maritime territorialization,” as discussed by Roszko, to the Timor-Leste-Australia maritime boundary dispute, which can be described as the ways in which states treat the sea as “land”, along with activities that states undergo to “perform” sovereignty in territorial seas and islands (Roszko, 2015, p. 235). Australia was the only nation other than Indonesia which initially recognized Timor-Leste as a part of Indonesia (Bell, 2000). This support led to the Australian public developing sympathy for independent Timor-Leste, which played a role in aiding Timor-Leste to gain international support for its sovereign rights over its maritime resources. Using Strating’s application of the concept of maritime territorialization (Strating, 2018), it can be said that although Australia’s support for the Indonesian occupation of Timor-Leste during 1975-1999 was a recognition for its land boundaries, eventually this discussion widened out into ‘treating sea as land.’ Additionally, it can also be said that Timor-Leste’s public diplomacy campaigns and use of international law mechanisms are the activities that it underwent to perform sovereignty in territorial seas and islands.

Equidistance is a principle used while determining a boundary, which corresponds with the median line at equal distance at every point from each state’s shoreline (Triggs, 2004). Timor-Leste based its legal argument on the median line principle. Section 2, Article 15 of UNCLOS states that “Where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured.... (Lando, 2017, p. 599)” However, international law is interpreted differently by different states. Timor-Leste’s argument was essentially that, to have a fairer settlement, the then eastern lateral line should be expanded in order to allow Timor-Leste to control the lucrative Greater Sunrise oil field (Strating, 2017).

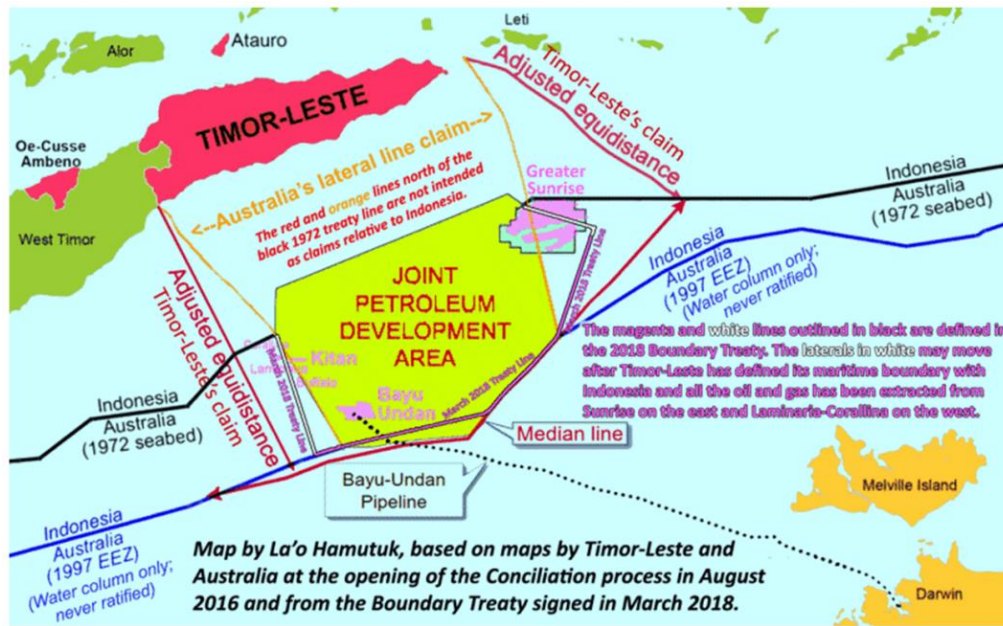


Figure 1 Both countries' claims

Source: <https://www.laohamutuk.org/Oil/Boundary/Treaty/18TreatyArticleEn.htm>

Timor-Leste stood by this stance since it was an internationally recognized approach. Australia on the other hand, insisted on using the continental shelf approach for delimitation, which meant that the unique configuration of the seabed constituted by the Timor Trough must be taken into consideration. This choice depends on security interests and the location of natural resources (Østhagen, 2020). Australia claimed that the maritime boundaries should be drawn as a natural prolongation of its continental shelf, which was the basis for the drawing of the northern and southern boundaries of the joint development area under the CMATS agreement. As for the issue of the eastern lateral, Timor-Leste argued that instead of drawing it by simple equidistance, it should be drawn as adjusted equidistance, median line being adjusted as per the relative length and predominant direction of opposing or adjacent coastlines (Strating, 2018), moving the line to the east and putting most of the lucrative Greater Sunrise field in its maritime zone. These highly differing opinions and interpretations of international law led to the commission to encourage the parties to not stick to merely legal arguments, but also consider economic interests (Tamada, 2020). As in the final agreement, an unusual dogleg bend, which does not conform to equidistance principles appears, which shows the practical procession by both Timor-Leste and Australia in terms of not drawing a line which would involve Indonesia. This is because of both the exclusive economic zone and continental-shelf claims of Indonesia, which leads to needing Indonesia's involvement to determine trilateral junction points (Heiser, 2003, 68). Since the 1972 Australia-Indonesia seabed boundary being questioned would involve Indonesia. This can be seen as a smart move by Timor-Leste since Timor-Leste preferred negotiated settlements instead of formal arbitration by the International Court of Justice. The expert panel introduced a final 'non-binding' set of recommendations (Strating, 2017). Essentially, it evolved through diplomatic give-and-take by the governments. During the conciliation process, the parties planned on agreeing on a Sunrise Development Concept, which would discuss how Sunrise would be developed and other specific details. However, this did not happen, but only mentions a Special Regime for Greater Sunrise without explaining how such a Concept should be achieved.

4. TIMOR-LESTE'S EMPLOYMENT OF PUBLIC DIPLOMACY

Public diplomacy is the threshold for countries to introduce more to what is the main goal of the state to other communities in an international environment where they can interact with each other (Ximenes, 2021). It can be said that it is an effort to achieve the national interests by informing and influencing people abroad to care about the issues in the country. It emphasized not only on government engagement, but also people-to-people relations, as seen by worldwide protests. This strategy was used by Timor-Leste after Australia's wiretapping scandal was revealed. In 2004, when both countries were negotiating territorial borders, Australia infiltrated the Palace of Government in Dili and installed listening devices. This led to even further hostile relations between the countries, with Timor-Leste referring the matter to the International Court of Justice, which led to the Australian government eventually agreeing to renegotiate.

Strating identifies three distinct but overlapping narrative strands in relation to public diplomacy. They are, symbolic, justice and legal narratives. In Timor-Leste's case, the symbolic case would involve Timor-Leste's claim over sovereignty, and how permanent maritime boundaries is an essential frontier of Timor-Leste's struggle to establish sovereignty. There have been statements by Timorese officials that young Timor-Leste's sovereignty remains incomplete without permanent maritime boundaries. Some say that it is framed as an issue about sovereignty and not that of fair resource distribution (Strating, 2017). This is crucial, because there is a considerable amount of sympathy towards Timor-Leste by the Australian civil society, because of Australia's complicit role in the brutal Indonesian occupation of Timor-Leste. Hence, this means that it is not only about resources, but also about sovereignty. Justice narratives emphasizes on the power dynamics – Australia, which is a powerful state, and Timor-Leste, which is a weaker and young state. It focuses on the unequal material conditions between the two countries. This was particularly used in the early years, where it seemed as if Australia unfairly used its leverage to blackmail Timor-Leste into signing treaties which were not beneficial to Timor-Leste. When the CMATS agreement was being negotiated, Australia was deliberately prolonging the possibilities for negotiations on the exploration of Laminaria-Corallina, to benefit from these fields. The moral question, of Australia being a rich neighbour and its involvement in Indonesia's violent occupation of Timor-Leste can be called into question. Legal narratives use international law to settle maritime disputes.

Australia, on the other hand, sees it as an issue which is vital for Timor-Leste's survival. Timor-Leste requires oil revenues, and the lack of time intensified its vulnerabilities. It can even be said that Australia used its status as a powerful nation to coerce Timor-Leste to sign agreements which were not completely beneficial to their smaller neighbour. However, the discussion of the use of coercive diplomacy by Australia is not within the scope of this essay. After gaining independence, Timor-Leste worked on two treaties, "Troubadour Unitization Treaty" and "CMATS Treaty". After the 2012 scandal of the Australian government employing wiretaps in Timor-Leste's internal discussions was discovered, the international community was concerned about the power relations (Ximenes, 2021). This led to Timor-Leste demanding Australia to settle disputes. This led to Australia changing its negligence towards Timor-Leste's calls to renegotiate the maritime borders. Timor-Leste brought Australia to an international court, and involved small communities, government, and other non-governmental organizations, even organizing a demonstrating in front of the Australian Ambassador's Office. Timor-Leste used the opportunity to deliver a press statement to express hopes that the international community will support its efforts in solving the problems Timor-Leste looked to address regarding its maritime boundary disputes (Ximenes, 2021).

"Normative sea power" can be used to resolve disputes where there is an asymmetrical power. It can be used to defend their interests, beyond their material or naval capabilities. This can be done

by asserting diplomatic and legal strategies. Several methods such as communication campaigns can call into question the legitimacy, legality, and morality of other states, and exert “bottom-up” pressure on governments to reconsider their positions. This can also be compounded by harnessing international society’s support to legitimize these claims. This method was seen as being used by Timor-Leste, especially after Australia’s wiretapping incident came to the public eye. It questions the ability of big states, such as Australia, to follow the “rules-based order.” In this way, public diplomacy is a significant tool for states which do not have the power to exert “hard power.” It is a move away from bilateral diplomacy, showing the shift from Ramos-Horta’s strategy.

5. TIMOR-LESTE’S RECONSIDERATION OF ITS FOREIGN POLICY

One of the aspects of concern that emerge from the Treaty is the upstream revenue sharing from Greater Sunrise. Although, the Treaty ensures that the Joint Petroleum Development Area (JPDA) falls entirely within Timor-Leste’s continental shelf, the Bayu-Undan field resources have almost completely been depleted. The role of Woodside, which retains licensee rights under the 2003 Greater Sunrise agreements, affected this bilateral dispute. Essentially, the development of the Greater Sunrise field continues to be a matter of joint development agreement, regardless of the fact that the Treaty gives it exclusive rights. As per Article 12 of the Sunrise International Unitisation Agreement of 2003, the licensee is required to develop Sunrise in a way that is commercially the best. Woodside declared in 2010 that a floating liquefied natural gas platform was the ideal option for processing gas, which led to Gusmão criticizing Australia over Sunrise development plans. Timor-Leste had argued that onshore processing would allow it to develop a petroleum processing industry, to create national infrastructure. Woodside’s refusal to accede to Timor-Leste’s pipeline demands resulted in Timor-Leste’s reinvigorated pursuit of permanent maritime boundaries (Strating, 2017). It can be said that Australia’s support for Woodside’s ideas is one of the factors which led to Timor-Leste’s policy shift from accepting a moratorium as per the CMATS agreements and pursuing permanent maritime boundaries (Strating, 2017).

6. CONCLUSION

In conclusion, it can be said that Timor-Leste’s strategies to resolve its maritime boundary disputes are an interplay between diplomacy, international law, and power dynamics. What makes it stand out from other young states, is its willingness to engage with public diplomacy and international dispute resolution mechanisms, such as UNCLOS. Legal arguments, coupled with diplomacy led to Timor-Leste being able to achieve a settlement using the concept of equidistance. The effectiveness of public diplomacy in shaping narratives shows the importance of norms in international relations. Further research must be done in terms of the role of Australia’s potential coercive diplomacy, from its place as a rich and powerful nation, and its use of Timor-Leste’s vulnerabilities to advance its own interests. Timor-Leste is a clear-cut case that showcases that even if a state is relatively young, and not powerful, it can make use of public diplomacy and international mechanisms to resolve maritime border disputes with a powerful nation.

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