

PERSPECTIVE

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The Timor Gap Dispute with Australia Inspires Timorese Political Activism

Max Lane

EXECUTIVE SUMMARY

- The public revelations in 2013 and 2014 about alleged Australian espionage, under the cover of the Australian Aid programme, of internal Timorese government discussions during the early period of negotiation with Australia on issues of access to oil and gas in the Timorese sea have aroused widespread public resentment in Timor towards Australia's policy.
- The Timorese parliament and government have created new political infrastructure to deal with the border dispute with Australia, indicating a broad consensus to confront the Australian government on the issue of the Maritime Boundary.
- The preparations made include the appointment of Xanana Gusmao, former president and now a key cabinet Minister, as Chief Negotiator on this issue. This confirms Gusmao's continuing central role in Timorese politics.
- Beyond preparing the formal infrastructure, there has been a return to the politics of mobilisation as a way of manifesting public sentiment on this issue. This has required looking to sources of leadership and organisation at the militant margins of the existing party structure. It has also provided a more conducive context for civil society and youth to mobilise separately. In March 2016, very large protest demonstrations were organised outside the Australian Embassy with Xanana Gusmao's support.
- Diplomatic and legal moves against Canberra since the March mobilisations indicate that the Maritime Boundary campaign will continue. Divisions have arisen between

the two largest Australian political parties: with one refusing to re-open negotiations and another stating its willingness to do so.

- The combination of the campaign against Australian policy, led by Gusmao, using diplomacy, legal methods and mobilisation opens the possibility that Timor will be entering a period of re-politicisation of society after a period of relative popular passivity. This may intersect with new rivalries with the elite, in particular between President Taur Matan Ruak and Xanana Gusmao.

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INTRODUCTION

On March 22, 2016 at least 40,000 – perhaps as many as 70,000 Timorese attended a protest outside the Australian Embassy in Dili, Timor Leste.¹ In a city of just over 200,000 people, this must be considered a very significant mobilisation. In February, there had already been a demonstration outside the Embassy organised by the Movement Against the Occupation of the Timor Sea (MKOTT) of almost 3,000.² They mobilised again on March 23.³ Significantly Xanana Gusmao, former President and Prime Minister, and now Minister for Planning and Strategic Investment as well as official Chief Negotiator for Timor Leste on the maritime boundaries, made clear public calls for Timorese to join the March 22 demonstration.

To do this he used a platform provided by an organisation not usually prominent in Timorese politics, the Association of Black Brigade Combatants (ACBN).⁴ These demonstrations were preceded by steps by the Timor Leste parliament and government to establish the formal political infrastructure needed to mobilise the governmental resources needed to conduct a challenge to the Australian government on the issue of the maritime boundary between Australia and Timor Leste. These developments not only have implications for Australia-Timor Leste relations but also for the dynamics of domestic Timorese politics.

THE ISSUE AND ITS HISTORY

In 2013 and 2014, articles appeared in the Australian press alleging that Australian intelligence agents had bugged the meeting room beside the Prime Minister's office in 2004, just as Dili was beginning negotiations with Canberra on the oil and gas resources in the Timor Sea.⁵ This then became public in Timor Leste. There had been preceding controversy over the existing treaties, in particular the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), in the Timorese media.⁶ This revelation exacerbated and sharpened the controversy.

¹ Australia press reports used the figure of 10,000. However there were no Australian media in Dili at the time. There are no drone or other aerial photographs showing how far crowds stretched down the roads leading to the Australian Embassy. The estimates of 40,000-70,000 is based on direct communications with a range of witnesses who described how far the crowds stretched back away from the Embassy along the approaching roads: <http://www.abc.net.au/news/2016-03-22/thousands-protest-outside-australian-embassy-in-dili/7268336>

<http://www.smh.com.au/world/thousands-of-east-timorese-besiege-australian-embassy-in-dili-20160322-gnob5x.html>

² <http://timfo.org/new-blog-avenue/2016/2/22/demonstration-in-dili>

³ <http://m.inilah.com/news/detail/2283092/ribuan-warga-dili-protas-di-kedubes-australia>

⁴ <http://www.lowyinterpreter.org/post/2016/04/11/Dili-protests-show-Timor-Leste-is-speaking-with-one-voice-on-maritime-boundary.aspx>

⁵ <http://www.abc.net.au/news/2013-11-27/east-timor-says-australia-spied-for-commercial-gain/5120738>

⁶ For a very detailed chronology of responses to CMATS in Timor see: <http://www.laohamutuk.org/Oil/Boundary/CMATSIndex.htm>

The negotiations during 2004 and 2005 produced the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS). This treaty provides for the equal distribution of revenue derived from the Greater Sunrise oil and gas field between Australia and East Timor. The field is located in the Timor Gap in an area on the Timor Leste side of where a median line boundary would be located. Dili had already won an agreement to 90% of revenues from the other resources in the area. During the period of the Suharto government in Indonesia, Jakarta and Canberra signed an agreement where Suharto ceded access to these resources to Australia and agreed to a 50-50 sharing of all revenues, not just the Greater Sunrise field – yet unexploited. In previous arrangements, East Timor would only have received about 18% of the revenue from the field. CMATS also puts on hold the right by both countries to claim sovereign rights, discuss maritime boundaries or engage in any legal process in relation to maritime boundaries or territorial jurisdiction for 50 years which is the duration the treaty is in effect.⁷ CMATS came into force in February, 2007.⁸

Even during the 2004-2007 period, and afterwards, domestic critics argued that CMATS forfeited Timorese sovereignty over that part of the Timor Sea that was on its side of a median line boundary. In fact, all of the area in which oil and gas deposits are known to exist are on the Timorese side of any median line border. The public accusation that Canberra used its aid programme for its spies to bug Timorese government offices indicated that the negotiations were not undertaken in good faith by Canberra.

The Timor Leste Maritime Boundary Office (MBO) states that in April 2013, Timor Leste initiated arbitration proceedings against Australia at the Permanent Court of Arbitration in the Hague, pursuant to the earlier Timor Sea Treaty and relating to the espionage claims during the CMATS negotiations⁹. It noted then that in December 2013, Australian security and intelligence officers searched and raided the home of Timor-Leste's Australian legal representative and seized documents and other data from his law office including legal advice concerning the espionage arbitration proceedings. This raid becomes the subject of separate proceedings commenced by Timor-Leste in the International Court of Justice. The MBO then clarifies that in June 2015 after Australia returned all of the seized documents and data, Timor-Leste confirmed that it would discontinue the case before the International Court of Justice. At the same time, Timor-Leste indicated its intention to reactivate the espionage arbitration proceedings against Australia at the Permanent Court of Arbitration.

⁷ CMATS is one of three treaties concerning the exploitation of gas and petroleum in the Timor Gap and is to be "read together" with the other two treaties, namely the Timor Sea Treaty of 2002 and the Sunrise International Unitization Agreement (Sunrise UIA) of 2003.

⁸ See also <http://www.laohamutuk.org/Oil/Boundary/CMATSindex.htm>

⁹ See http://www.gfm.tl/learn/timor-sea-agreements/key-dates-timor-sea-agreements_3/

POLITICAL PREPARATIONS WITHIN TIMOR.

a. Formal institutions

As early as 2013, it became clear that Timor Leste was willing to enter into a serious dispute with Canberra. Within Timor Leste, there were moves to set up a formal political infrastructure to enable this. On January 14, 2015, the Timor Leste parliament established the Council for the Final Delimitation of Maritime Boundaries. The Law forming the council followed from an October 24th, 2014 Resolution of National Parliament to support the Government in the creation of this Council. The Timor Leste government explained the rationale and mandate of the Council in a statement on January 30, 2015:¹⁰

Activities in the Timor Sea, which stretches between the shores of Timor-Leste and Australia, are currently guided by provisional arrangements in the form of three treaties: The Timor Sea Treaty [TST], Certain Maritime Arrangements in the Timor Sea [CMATS – which Timor-Leste has declared to be invalid due to espionage activities by Australia] and the International Unitization Agreement [IUA].

Timor-Leste and Australia, as parties to the United Nations Convention on the Law of the Sea [UNCLOS], have a positive obligation to reach a final agreement on maritime delimitation of their boundaries, with the current provisional arrangements “not to hamper or jeopardize the reaching of the final agreement.”

The new Law declares that:

“Twelve years have passed since the restoration of the independence of the Nation, and it is now necessary to determine, once and for all, the national maritime boundaries in light of their enormous social, political and economic impact.”¹¹

The Council was to be headed by the Prime Minister who would appoint the membership.¹² Prime Minister Rui Maria de Araújo appointed as members of its Advisory Commission the former Presidents, Prime Ministers and Speakers of Parliament, including Xanana Gusmao, Jose Ramos Horta and Mari Alkatiri. The decision to establish a Council with this composition reflects the unanimity of the Timor Leste political elite in adopting the approach of seeking final boundaries, based on the median line principle.

¹⁰ See *Timor-Leste passes Law establishing a Maritime Council, affirming its intent to settle Maritime Boundaries with near neighbor Australia*, <http://timor-leste.gov.tl/?p=11170&lang=en>

¹¹ *Timor-Leste passes Law establishing a Maritime Council, affirming its intent to settle Maritime Boundaries with near neighbor Australia*, Government statement, January 30, 2015.

¹² For a comprehensive official outline of the Council’s role see the government publication, *The Council for the Final Delimitation of Maritime Boundaries* at: <http://static1.squarespace.com/static/544602fae4b076f26051926a/t/55aed867e4b025f8fc5e79ba/1437522023679/MBO+Booklet+040615+Med+Res+ENG.pdf>

These key figures of Timorese politics, all central in either the domestic or international efforts to win independence, lead competing political parties, or have otherwise been rivals at many points in time. Their membership of the Council underscores the national unity on this issue.

While headed by P.M. Ruis Araujo, the Council has elected Xanana Gusmao to be Chief Negotiator. At the same time it can be noted that the current Foreign Minister, Hernani Coelho was previously Ambassador to Australia. The new Ambassador to the United Nations – Milena Pires – has political campaigning experience against Australian governments in the 1990s.

The council has also been given substantial administrative resources. A Maritime Boundary Office has been established as its Secretariat. It has already launched an impressive website at <http://www.gfm.tl/>. A separate negotiating team will also be established.

b. Campaign preparations

The formal infrastructure established by Timorese parliament can be viewed as the technocratic apparatus needed to conduct diplomatic efforts, negotiations as well as legal cases with Australia. (And it should be noted, Timor Leste has also begun negotiations with Indonesia on its lateral borders).¹³

It is difficult to see Dili making progress on these issues without a change in the political atmospherics in Australia. The current Australian government, under both Prime Ministers Abbott and Turnbull, have refused to admit any wrongdoing regarding the espionage allegations and more significantly continue to defend the current CMATS arrangements. Up until May 2016, Canberra has rejected requests by Dili, including from the Prime Minister, to enter negotiations over the boundary.¹⁴ There are no signs of the government budging.

There has, however, been a crack in the two party consensus on this issue. The Opposition Australian Labor Party (ALP) has recently announced that it was prepared to enter into negotiations on the maritime boundary and that if there was no agreement, an ALP government would be willing to submit to an international adjudication process and abide by the decisions.¹⁵ It has not committed to the median line principle nor indicate whether it

¹³ <http://nasional.kompas.com/read/2015/08/26/14261971/Timor.Leste.Siap.Bahas.Perbatasan.Laut.dengan.Indonesia>

¹⁴ <https://au.news.yahoo.com/a/31327512/no-more-sea-talks-aust-tells-east-timor/>; Frank Brennan, *Deja vu for Timor as Turnbull neglects boundary talks in Eureka Street*, April, 2015 at <http://www.eurekastreet.com.au/article.aspx?aeid=46114#.Vzv5Kfl96Uk>

¹⁵ <http://www.afr.com/news/politics/labor-vows-to-end-timorleste-dispute-over-greater-sunrise-territory-20160210-gmq5n4> This would require Australia to withdraw its 2002 declaration to UNCLOS if the case was heard under ITLOS:

http://www.un.org/depts/los/convention_agreements/convention_declarations.htm#Australia%20after%20ratification

would seek commitments on aspects of exploration and processing of oil and gas resources as part of any negotiation.

Given the position of the Australian government and the ambiguous position of the ALP, it is clear that the Timor Leste national leadership also assesses that mobilising or at least harnessing Australian public opinion in its favour will be crucial. Xanana Gusmao had been taking advantage of invitations to speak at Australian universities to state Timor Leste's case to the Australian public. This started in 2015 and is continuing in 2016, with recent speeches in Perth and Sydney. In Sydney, his audience was organised by solidarity activists rather than by academics at a university.

It is in this context that Xanana Gusmao actively called for popular involvement in the March 22 demonstrations outside the Australian Embassy. There is an assessment that Australian public opinion can be more effectively moved, if it is clear that not only the Timor Leste government but also Timorese society supports the demands for a median line maritime boundary. As stated earlier, tens of thousands of Timorese attended this demonstration.

In fact, there had already been demonstrations outside the Embassy on the same issue as early as 2010. This was organised by the Movement Against the Occupation of the Timor Sea (MKOTT).¹⁶ Their activity escalated again in 2016. They organised a 2000-strong demonstration outside the Australian Embassy on February 22 and followed this up with a series of well-attended teach-ins on Dili higher education and university campuses. This meant that when the latter call by Xanana Gusmao went public, students in particular were well-informed. MKOTT also mobilised people to attend the March 22 demonstration. On March 22, it issued a statement with the following key points.¹⁷

MKOTT comes to ask the following demands:

1. Australia should return to the mechanisms for resolving maritime boundary disputes under the International Court of Justice and the International Tribunal for the Law of the Sea.
2. The Government of Australia should respect the rights of Timor-Leste's people in the Timor Sea according to international law (UNCLOS).
3. The Government of Australia should engage in honest and open negotiations about maritime boundaries, not only to talk about bilateral relations in general.
4. The Government of Australia should stop stealing Timor-Leste's people's resources, which reduces opportunities for good lives for women, children, and vulnerable people in Timor-Leste.

¹⁶ <http://www.channelnewsasia.com/news/asiapacific/maritime-border-dispute/2586896.html>

¹⁷ <http://laohamutuk.blogspot.co.id/2016/03/mkott-statements-to-australia-and-tl.html>

In addition to the above demands, through this request, MKOTT also asks the Australian people, as a people who have shown their maturity and strong civic spirit, to:

- i. Stand alongside the people of Timor-Leste to fight for sovereignty, as you did during the Indonesian occupation.
- ii. Encourage your Government to respect Timor-Leste's people's rights, through deciding a fair maritime boundary according to international legal principles.
- iii. Help your domestic politics to become more democratic, respecting law and human rights, to make Australia an exemplary nation with a democratic system that other countries in this region can follow.

MKOTT, like the other organisers of March 22, were using the mobilisation to make an appeal to the Australian public, hoping that the action would be publicised in the Australian media. This did happen, but on a very modest scale. MKOTT also mobilised another 3-4,000 people on March 23.

While MKOTT represents the most active wing of Timorese non-government organisations, especially based on young people and students, and has played an important role in these campaigns so far, the biggest mobilisations occurred with the public support of Xanana Gusmao and with the active support of the leaderships of key institutions, such as the universities.

Gusmao did not use an official government platform to give his public support for the mobilisation nor the political party he established and has led, the National Congress for Timorese Reconstruction (CNRT). Instead he made his call at a day-long, nationally televised, seminar organised by the Associação dos Combatentes Brigada Negra (ACBN – the association of Combatants of the Black Brigade), a veterans' organisation of which Xanana Gusmao is the honorary president.¹⁸ An important figure associated with the ACBN is Avelino Coelho. He is also Secretary of State for the Council of Ministers¹⁹ in the government and President of the Socialist Party of Timor (PST). The PST is a small party with no members of parliament. Coelho was the main field commander of the Black Brigade of urban militants in the 1990s. He reported directly to Xanana Gusmao at that time in Gusmao's role of Commander-in-Chief of the Timorese resistance forces.

Key speakers at the ACBN seminar were Xanana Gusmao and Avelino Coelho. Agio Perrera. President of the Council of Ministers, also spoke. They called for Australia to resume negotiations and to accept the median line principle.²⁰ The ACBN released an extended statement which included the point:

¹⁸ <http://poskotanews.com/2016/03/25/xanana-gusmao-serukan-protos-ke-australia/>

¹⁹ See the entry in *Structure of the VI Constitutional Government* at <http://timor-leste.gov.tl/?p=13&lang=en>

²⁰ The ACBN extended statement on these issues, including historical background: *CARTA ABERTA AO PRIMEIRO-MINISTRO DA AUSTRÁLIA SENHOR MALCOLM BLIGH TURNBULL*

Now, according to the (more) recent International Law of the Sea, when there is no 400 miles separation between the two countries, the border must be set based on the line equidistant from both countries. This is precisely the case between Australia and Timor-Leste, therefore, because the distance between the two countries is less than 400 miles, ACBN asserts that the delimitation of the maritime border maritime is based not on the Continental Shelf, as always defended by Australian governments, but on the equidistance line (median line) between the two countries in accordance with international law. [see fn. 20]

These speeches were all broadcast on national television. The demonstrations to start on March 22 were announced and Gusmao repeatedly called for people to attend.

While the ACBN event primarily took the form of a seminar to discuss the Maritime Boundary issue, with detailed reports on its diplomatic history by Agio Perrera, the event had another important feature. There was a ceremony to recognise the contribution of the members of the B.N. in the 1990s and to recognise the Indonesian activists who had acted in solidarity with their resistance activities.²¹ A large number of Timorese veterans received certificates of recognition signed by Xanana Gusmao as well as several Indonesian activists who were brought to Dili.²² Such an event served to revive memories of the militancy and role of mobilisation in Timorese history. This may have been considered important as the last 15 years have been marked by a tendency to remove this feature from Timorese politics, partly due to fears of social conflict explosions (which have happened) but also reflecting the choice of a model of political development based on electoral representation with minimal mobilisation between elections – the conventional liberal electoral model.

The ACBN seminar and ceremony, with Indonesian as well as Timorese speakers all with a history in mobilisation, becomes an appropriate platform from which to call for a demonstration against Australian government policy, aimed to also appeal for Australian public support. To emphasise the latter aspect, there was also a speaker who is an activist in the Timor Sea Justice Campaign in Australia, who spoke of the prospects of winning public support for the demand for a change in Australian policy. The speaker indicated there would be pickets and protests in Australia, the Philippines and Malaysia supporting the March 22 Dili demonstration.²³

at <http://www.telanon.info/wp-content/uploads/2016/03/brigada-negra-carta-aberta-ao-1-ministro-da-australia-versao-oficial-22-de-marco-de-2016.pdf>

²¹ Some controversy emerged in Indonesia after it was incorrectly reported that one Indonesian activist, the poet and theatre activist, Wiji Thukul, was given an award by Xanana Gusmao for making bombs in Java. Thukul was a member of the Peoples' Democratic Party (PRD) in the 1990s. He disappeared in 1997, feared by human rights organisations to have been detained and killed.

<http://internasional.kompas.com/read/2016/03/19/11560951/Alasan.Kenapa.Xanana.Menghormati.Wiji.Thukul>

²² <http://www.mediaindonesia.com/news/read/35172/xanana-tidak-pernah-sebut-wiji-thukul-perakit-bom/2016-03-19>

²³ <http://www.timorseajustice.com/timor-sea-justice-campaign-news/calling-for-permanent-maritime-boundaries-a-week-of-international-solidarity>

The call made from this ACBN platform, gathering tens of thousands of people on March 22, was clearly successful.

Since the March 22 mobilisations, Xanana Gusmao has accepted at least three invitations to speak in Australia and has used these to make speeches or give interviews on the Maritime Boundary issue. The Timor Leste government has also sought compulsory arbitration on the issue at the United Nations. It is as yet unclear how this will evolve.

QUESTIONS ON FUTURE TRAJECTORIES.

On April 10, Dili submitted a request for compulsory conciliation by the U.N. in this case.²⁴ This is further indication that this campaign will continue.

A major question for Timorese politics is whether mobilisation of public protest will continue to be a part of the campaign. This question relates to two important aspects of Timorese politics. These are: first, the extent to which the political spectrum outside the mainstream parties (such as ACBN) will continue to play a role, and second, the extent which a high profile for Xanana Gusmao in his role as Chief Negotiator will impact on new political rivalries between Xanana and president Taur Matan Ruak. President Ruak attacked Gusmao and also Mari Alkatiri for corruption in a recent speech to parliament (although citing no examples).²⁵ It is now common knowledge that the President is planning to stand for parliament in the next election as part of a campaign for a new political party, The Peoples Liberation Party (PLP).²⁶

It is possible that future mobilisations will depend on developments in Australian politics and how much public opinion will be needed to be galvanised there.

²⁴ <http://www.abc.net.au/news/2016-04-11/east-timor-to-negotiate-maritime-border-with-australia-at-un/7316674>

²⁵ <http://www.smh.com.au/world/discontent-about-xanana-gusmao-mari-alkatiri-families-east-timor-president-20160226-gn4ck9.html>

²⁶ <http://www.theaustralian.com.au/news/world/timor-leste-president-taur-matan-ruak-urged-to-resign/news-story/3923c41e1e2b89a5ff1451e618a7b0c1>

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