

# MARITIME DISPUTE RESOLUTION PROJECT

## Case Summaries in Brief Round III



U.S.-ASIA LAW INSTITUTE  
NEW YORK UNIVERSITY SCHOOL OF LAW

Maritime Dispute Resolution Project

# Case Summaries in Brief Round III

By Nax Hamouche and Peter A. Dutton



A research project of the  
U.S.-Asia Law Institute

---

## Contents

Project Background.....	2
Case Study 1: Australia – Timor-Leste Timor Sea Conciliation and Maritime Delimitation .....	4
Section I – Introduction, Background, and Dispute Summary .....	4
Section II – Analysis of Key Substantive Matters .....	10
Sections III and IV – Implementation and Conclusions .....	11
Section V – Remaining Challenges .....	12
Case Study 2: Norway–Russia Barents Sea Delimitation Agreement.....	14
Section I – Introduction, Background, and Dispute Summary .....	14
Section II – Analysis of Key Substantive Matters .....	19
Sections III and IV – Implementation and Conclusions .....	21
Case Study 3: Israel–Lebanon Maritime Delimitation Negotiation .....	23
Section I – Introduction, Background, and Dispute Summary .....	23
Section II – Adoption of the Agreement.....	29
Sections III and IV – Observations and Conclusions .....	29
Case Study 4: Sino–Vietnam Gulf of Tonkin Delimitation Negotiation.....	31
Section I – Introduction, Background, and Dispute Summary .....	31
Section II – Analysis of Key Substantive Matters .....	33
Sections III and IV – Implementation and Conclusions .....	35

### Project Background

The U.S.-Asia Law Institute at New York University School of Law completed an extensive study of reported cases of international maritime disputes and their resolution through institutional dispute resolution mechanisms. The project generated insights into successful dispute resolution involving adjudication, arbitration, and conciliation and generated further insights into ways in which international law can support successful negotiations to resolve such disputes. The first two rounds of the project, undertaken in 2019 and 2020, focused on cases involving adjudication and arbitration. This third round explored a wider range of approaches to ensure comprehensive findings, assessing case involving negotiation and conciliation. The project provides the basis to share valuable insights to assist East Asian governments to deal with long-standing maritime disputes in the region.

As in the first two rounds, the U.S.-Asia Law Institute invited experts in international law of the sea to develop case studies for group analysis. Three case studies involved successful negotiation and one case study represented the only published case in which the UNCLOS process of conciliation was employed. These cases were selected from regions around the globe where two states sought resolution for unresolved territorial or maritime disputes. Each expert examined the facts, legal issues, and resolution methods, and extracted relevant lessons for unresolved maritime disputes, aiming to assist East Asian governments to peacefully manage or resolve disputes according to international law.

After a delay of three years between workshops because of the global pandemic, on March 22, 2023, the U.S.-Asia Law Institute held the third project workshop in person at New York University to share research results and identify international trends among case study authors, with additional practitioners and scholars offering valuable insights during the evaluation process.

### Cases prepared

**Case Study 1: Australia –  
Timor-Leste Timor Sea  
Conciliation and Maritime  
Delimitation**

**Clive H. Schofield**

Head of Research, Sasakawa Global Ocean  
Institute, World Maritime University, Malmö,  
Sweden

**Case Study 2: Norway–  
Russia Barents Sea  
Negotiation and Delimitation  
Agreement**

**Peter A. Dutton**

Professor of International Law, Stockton  
Center for International Law, U.S. Naval War  
College, Adjunct Professor of Law at New  
York University School of Law, and Adjunct  
Faculty Advisor, US-Asia Law Institute

**Case Study 3: Israel–Lebanon  
Maritime Delimitation  
Negotiation**

**Nax Hamouche**

Junior Research Scholar, U.S.-Asia Law  
Institute, New York University School of Law

**Case Study 4: Sino–Vietnam  
Gulf of Tonkin Delimitation  
Negotiation and Agreement**

**Isaac B. Kardon**

Asia Program Senior Fellow for China  
Studies, Carnegie Endowment for  
International Peace

## Case Study 1: Australia – Timor-Leste Timor Sea Conciliation and Maritime Delimitation

By Clive H. Schofield

### Section I – Introduction, Background, and Dispute Summary

Australia, Timor-Leste, and Indonesia are geographically connected through the Timor Sea. The dispute over maritime boundaries in the Timor Sea, which has been ongoing since the 1970s, intensified after Timor-Leste gained independence in 2002, primarily due to the issue of accessing underwater resources in the Timor Sea. The presence of the Timor Trough, a deep underwater trench near the island of Timor, complicated the delimitation of maritime boundaries in the region as it implicated tension between continental shelf law involving natural prolongation and exclusive economic zone (EEZ) law involving equidistance.

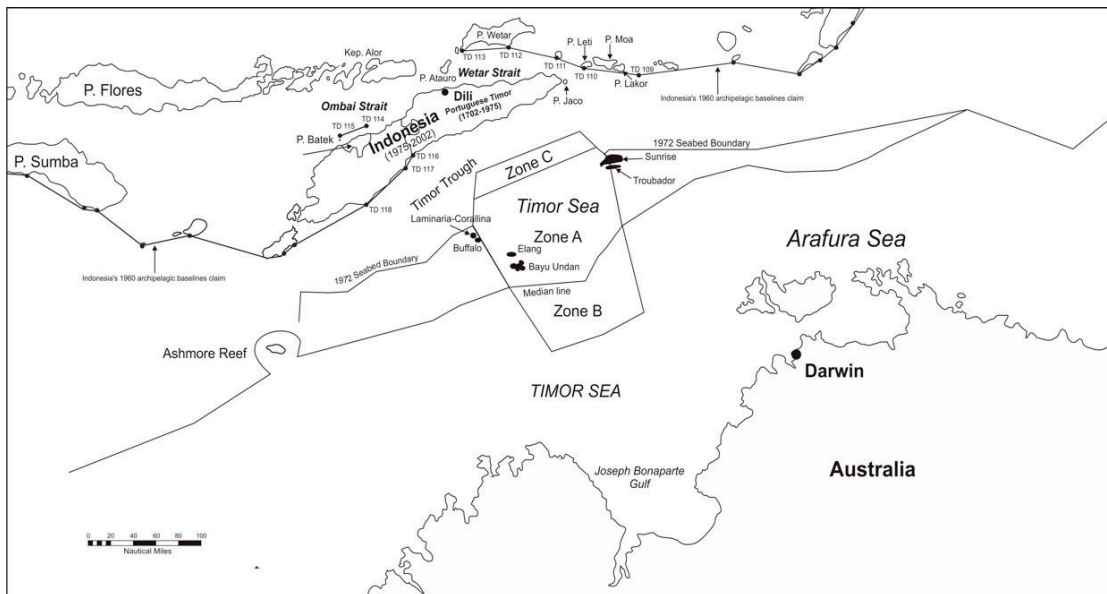


Figure 1. The geographic region relevant to the delimitation negotiations between Australia and Timor-Leste

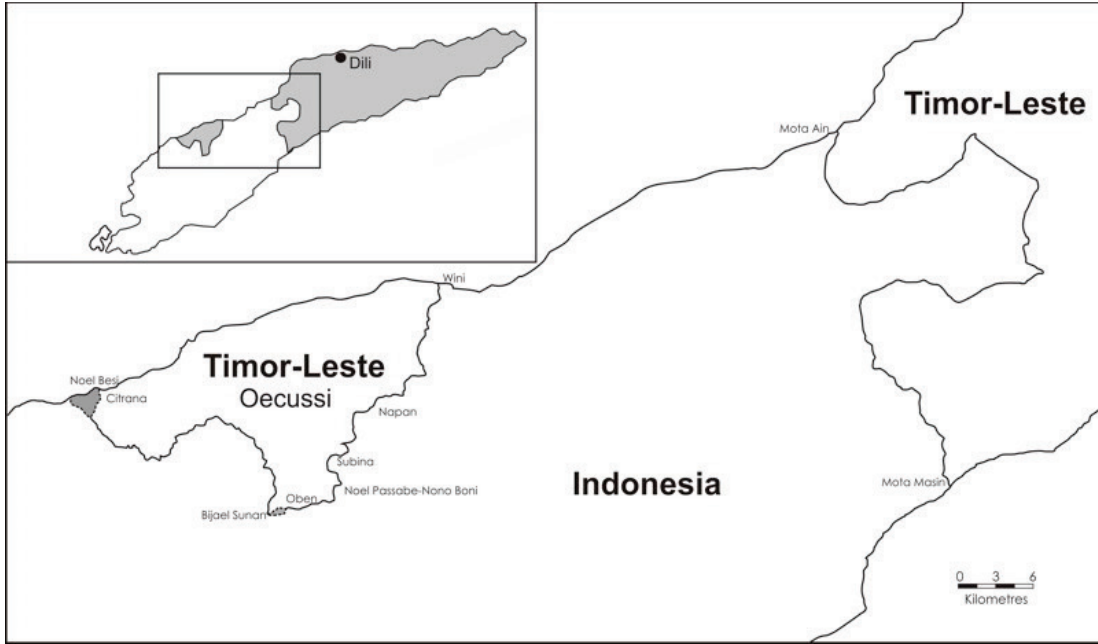


Figure 2. Location of Oecussi

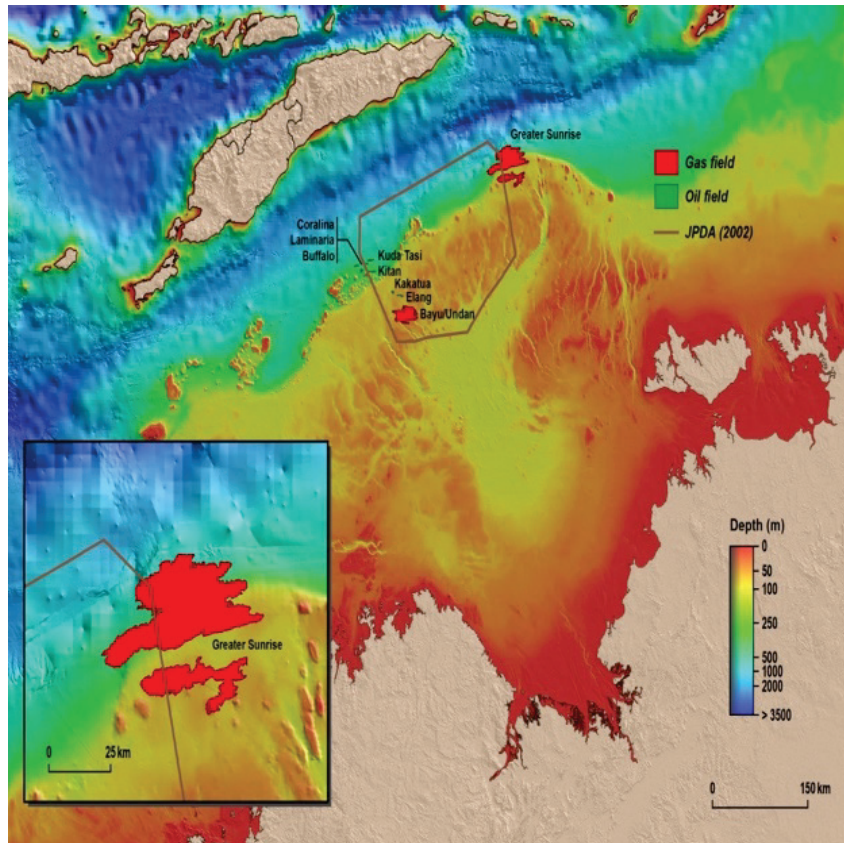


Figure 3. Continental Shelf in the Timor Sea

The need for delimitation of maritime boundaries arose as Australia, Indonesia, and Timor-Leste, all parties to the United Nations Convention on the Law of the Sea (UNCLOS), asserted overlapping EEZs claims within 200 nautical miles of their respective coastlines in the Timor Sea.

The Australia – Indonesia Delimitation Agreement in the Timor Sea, established in 1972 prior to Timor-Leste’s independence, involved negotiations in which Australia successfully advocated for the concept of “natural prolongation” to define its continental shelf boundary, resulting in a delimitation line that favored Australia, which secured approximately 80% of the overlapping claims area including areas close to Indonesia’s coast. This boundary predated the creation of the EEZ during the UNCLOS negotiations.

The 1972 continental shelf boundary between Australia and Indonesia was divided by Portuguese Timor, creating the “Timor Gap.” Australia initially recognized Indonesian sovereignty over East Timor in part to gain access to the Timor Sea’s potential hydrocarbon resources, leading to negotiations and to establish the Timor Gap Zone of Cooperation. However, this arrangement became obsolete due to subsequent events, including Timor-Leste’s independence.

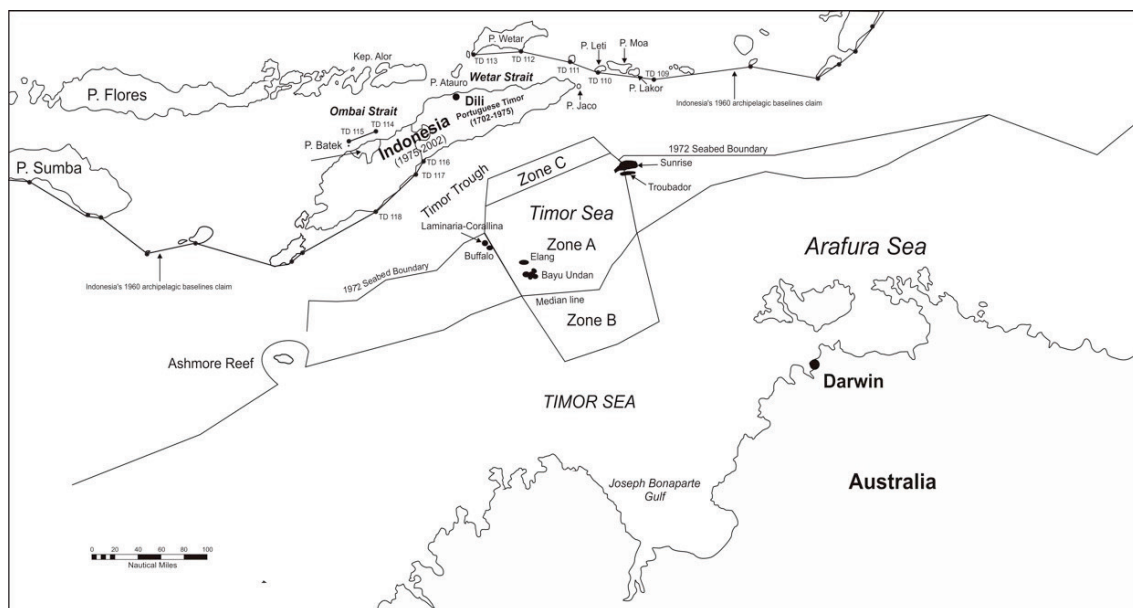


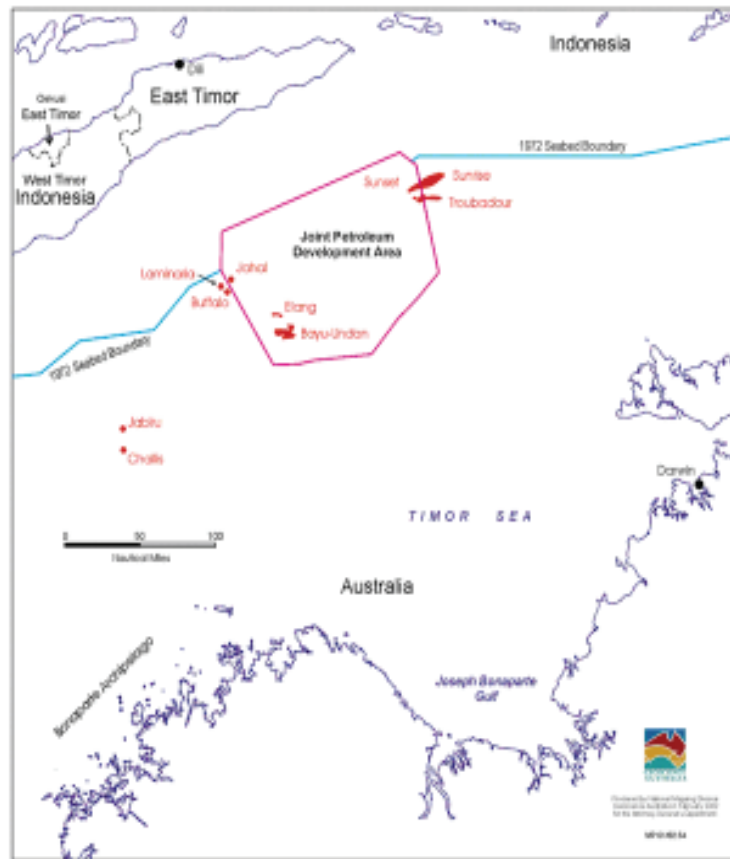
Figure 4. Timor Gap Zone of Cooperation



The agreement between Australia and Indonesia regarding water column jurisdiction in the Timor Sea was easier to achieve due to Australia's focus on fisheries rather than oil and gas resources. The agreement involved the designation of a provisional fisheries surveillance and enforcement line in 1981 following a memorandum of understanding agreed in 1974, which allowed Indonesian fishermen to continue traditional fishing activities around the Ashmore Islands. Australia declared a 200-mile fishing zone in 1979 and opted for equidistance as the basis for maritime boundary delimitation. While these arrangements have been criticized, they have yet to be tested as the agreement is not yet in force. Close cooperation and strong bilateral relations between the two countries have been crucial for effectively exercising sovereign rights in distinct maritime zones.

Following the independence referendum in East Timor and subsequent violence, the UN Mission in East Timor (UNTAET) took over administration, and an agreement was made between Australia and UNTAET to safeguard resource development in the Timor Sea. East Timor later gained independence and entered into the Timor Sea Treaty with Australia, establishing a Joint Petroleum Development Area (JPDA) where East Timor would receive 90% and Australia 10% of government revenues from the area.

**Timor Sea Treaty  
Joint Petroleum Development Area**



*Figure 5. Timor Sea Treaty Joint Petroleum Development Area (JPDA)*

In 2002, a Memorandum of Understanding and subsequent Sunrise International Unitization Agreement (Sunrise IUA) were signed to address the unitization of oil and gas fields, specifically the Greater Sunrise deposits. However, Timor-Leste deemed the agreement unacceptable and decided not to seek parliamentary approval, leading to the shelving of the Sunrise project and using non-ratification as a means to pressure Australia for a more equitable share of seabed resources in the Timor Sea.

On February 23, 2007, the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) came into force, deferring the maritime jurisdiction and boundaries claims of Australia and Timor-Leste for up to 50 years while ensuring equal sharing of revenues from specific oil and gas fields in the central Timor Sea. CMATS aimed to address the dispute and

provide a mutual moratorium on further claims, effectively removing the issue of maritime boundaries and resource access from the negotiations.

Australia's reluctance to delimit a definitive maritime boundary with Timor-Leste in the Timor Sea is driven by the desire to maintain its existing boundary arrangements with Indonesia. Timor-Leste's dissatisfaction with the CMATS treaty, along with strained bilateral relations and accusations of Australian espionage, led to Timor-Leste seeking options to break the impasse, including initiating compulsory conciliation under UNCLOS. Eventually, in March 2018, Australia and Timor-Leste signed a treaty establishing their maritime boundaries in the Timor Sea, marking a significant breakthrough and symbolic victory for Timor-Leste.

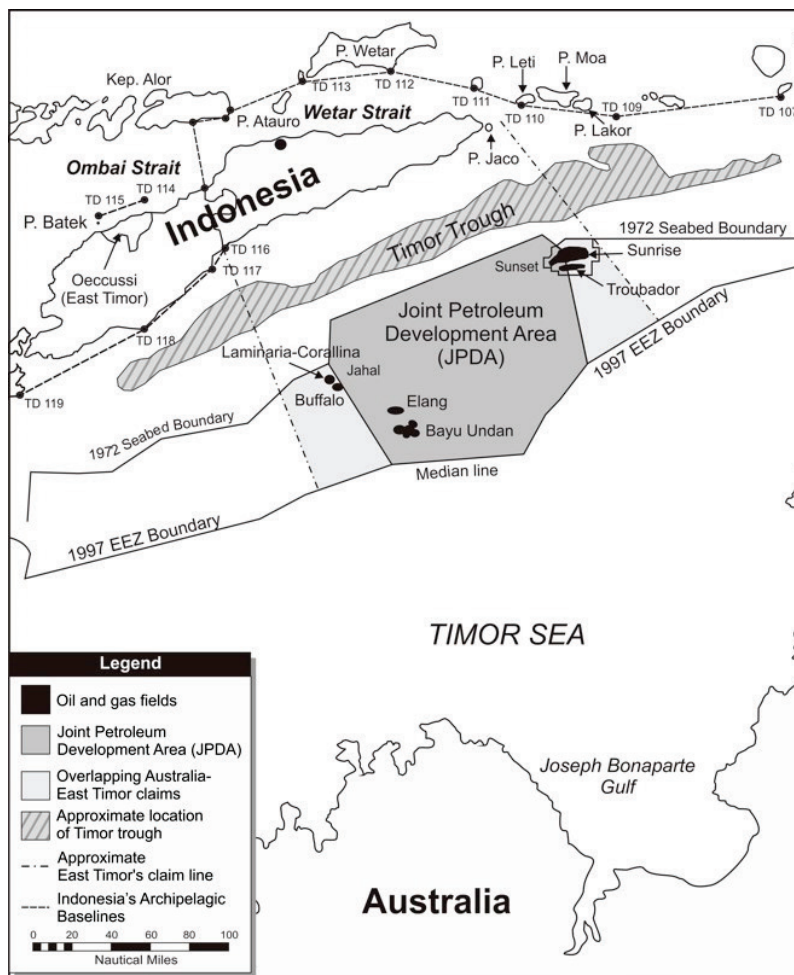


Figure 6. Timor-Leste Claims in the Timor Sea

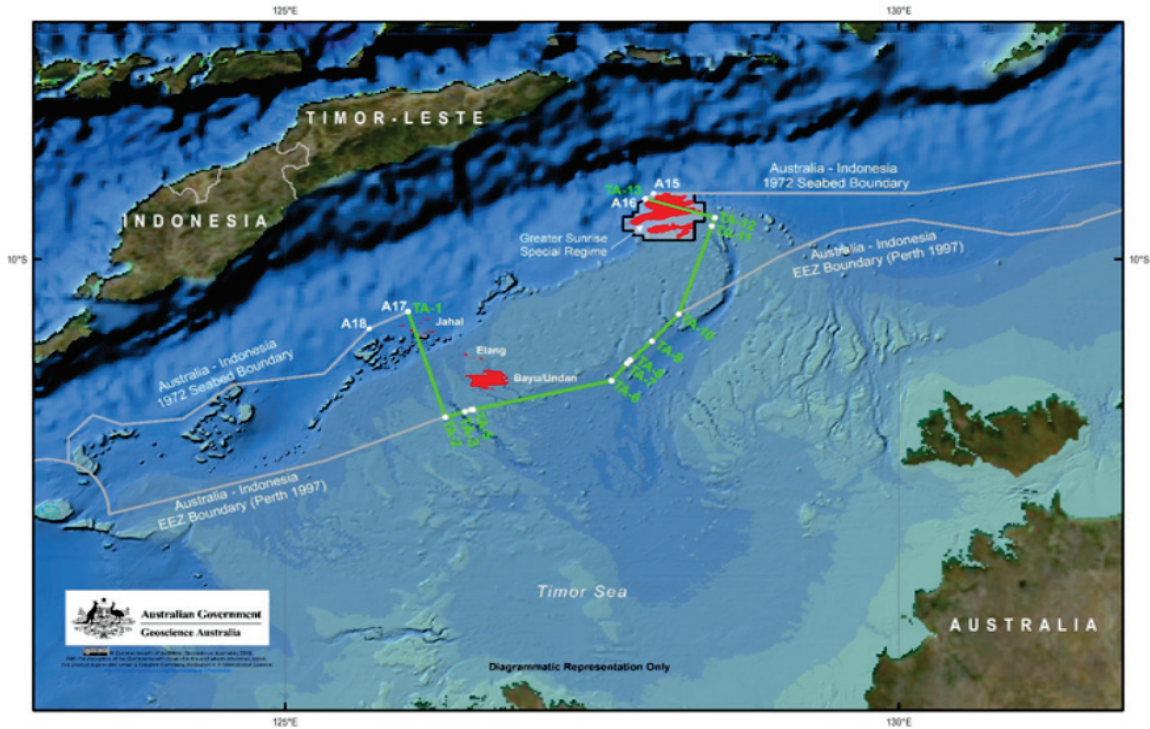


Figure 7. *Australia – Timor-Leste Maritime Boundary Agreement*

## Section II – Analysis of Key Substantive Matters

The Australia – Timor-Leste Conciliation Commission was established under the dispute resolution provisions of UNCLOS Part XV, article 284, providing a legitimate framework for the process. Australia’s prior declaration under UNCLOS article 298(a)(i) exempting maritime boundary delimitations from binding dispute resolution did not prevent the initiation of conciliation proceedings.

The conciliation process resulted in a boundary line that was described as innovative and not something an arbitrator or judge would have drawn. The boundary arrangements favor Timor-Leste, particularly in the lateral continental shelf boundary lines, with significant oil and gas fields falling on their side. The treaty allows for future adjustments to these boundary lines, anticipating negotiations between Indonesia and Timor-Leste to widen certain segments potentially.

The Australia – Timor-Leste treaty connects the revenue-sharing

arrangement to the pipeline destination, offering different revenue splits depending on whether the pipeline terminates in Australia or Timor-Leste. Timor-Leste has advocated for the pipeline to be directed to their country, but commercial feasibility, the presence of the Timor Trough, and related cost considerations suggest that directing it to Australia is more viable, despite Timor-Leste's resistance for political reasons.

### Sections III and IV – Implementation and Conclusions

The maritime boundary agreement between Australia and Timor-Leste, which was passed by both countries' parliaments in July 2019, and was formally ratified on August 30, 2019, coinciding with the 20th anniversary of Timor-Leste's referendum on independence from Indonesia.

The success of the conciliation can be attributed to several factors, including the careful establishment of the process in order to overcome Australia's objections. Once Australia accepted the competence of the Conciliation Commission, it engaged in the process in good faith, showing a willingness to negotiate and avoid inflexible positions. Australia's recognition of the opportunity to resolve disputes, its support for international law, and concerns about the consequences of not reaching an agreement all contributed to the process's success.

The Conciliation Commission focused on rebuilding trust and fostering confidence between Australia and Timor-Leste at the beginning of the conciliation process. It achieved this by engaging in separate discussions with each party, encouraging open dialogue and understanding of their positions. Confidence-building measures were agreed upon, including the termination of CMATS, negotiations for permanent maritime boundaries, and Australia's commitment to remove an area of oil and gas exploration. As a result, Timor-Leste withdrew its claims and suspended arbitration initiated under the Timor Sea Treaty.

Unlike previous negotiations, strict confidentiality was maintained throughout the conciliation process. Both parties agreed to refrain from public statements that could exert pressure or limit options, instead opting for positive comments to foster constructive engagement. This highlights

the significance of confidentiality to enable negotiators to reach compromise solutions.

The discussion of historical, socio-cultural aspects, and the importance of settling international boundaries for Timor-Leste's sovereignty, security, and long-term development, as well as considering the implications for relations with Indonesia and the interests of international oil companies, were all crucial dimensions addressed during the conciliation process. The conciliation process, initially set for a 12-month duration, was extended to approximately 18 months by mutual agreement, with the presence of a deadline serving as a motivating factor that added impetus to the negotiations.

The development of trust between the parties and their confidence in the Conciliation Commissioners played a vital role in achieving a successful outcome, with the Commissioners' commitment, creativity, and use of separate meetings, informal settings, and non-adversarial dialogue proving to be effective in building trust and fostering the conciliation process.

### Section V – Remaining Challenges

The primary challenge in the Australia – Timor-Leste context is the development of the Greater Sunrise gas field, which prompted the involvement of the Conciliation Commission and joint-venture partners. Despite discussions and the acquisition of majority shares by Timor-Leste, the agreement on developing Greater Sunrise and addressing technical challenges remains uncertain.

An additional issue of concern pertains to the delimitation and demarcation of land boundaries between Indonesia and Timor-Leste on the island of Timor, as well as the unresolved maritime boundaries in the Ombai Strait and Wetar Strait, raising uncertainties about potential boundary adjustments in the Timor Sea.

These proceedings marked the first utilization of the compulsory

conciliation process under UNCLOS. They proved highly successful in reaching an agreement on a permanent maritime boundary but did not provide a definitive solution for the development of Timor Sea seabed resources. While conciliation offers a novel dispute settlement option, its effectiveness depends on the willingness of the involved parties to make necessary compromises. Complex disputes involving multiple states, island sovereignty, and maritime delimitation, particularly in the context of heightened militarization and distrust, may not be well-suited for conciliation. Nevertheless, the Australia – Timor-Leste conciliation process serves as a remarkable example of success in resolving a longstanding maritime boundary dispute, highlighting the potential of this dispute resolution option with the right political will and skilled conciliators.

## Case Study 2: Norway–Russia Barents Sea Delimitation Agreement

By Peter A. Dutton

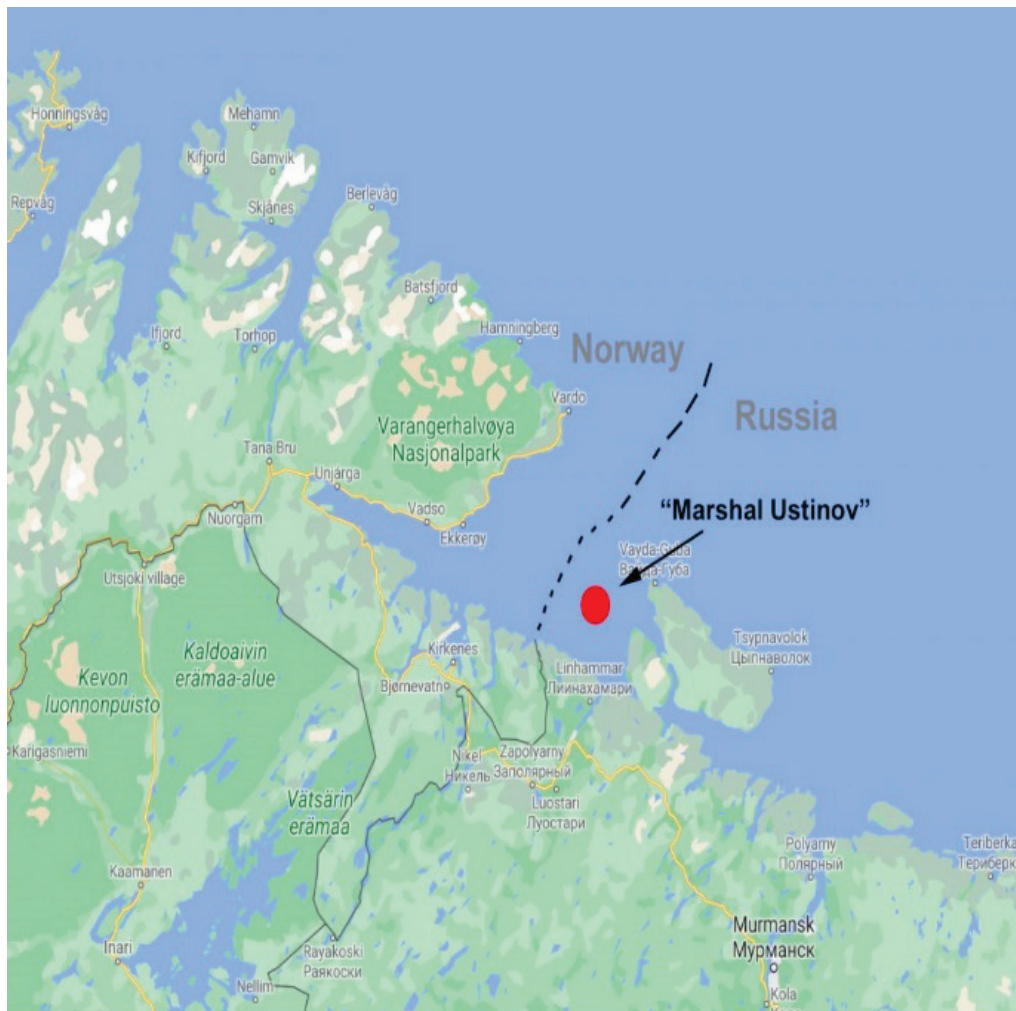
### Section I – Introduction, Background, and Dispute Summary

The relevant area for delimitation includes the Varanger Fjord, the Barents Sea, and adjacent portions of the Arctic Ocean, surrounded by Norway’s Svalbard archipelago, Russia’s Franz Josef Land and Nova Zemlya, and the mainland coasts of Norway and Russia. The Barents Sea, with its relatively shallow depth and warm Atlantic water brought in by ocean currents, serves as rich fishing grounds for both countries, while the Varanger Fjord is located on Norway’s easternmost coast, opening to the west into the Barents Sea.



Figure 1. The geographic region relevant to the delimitation negotiations between Norway and Russia





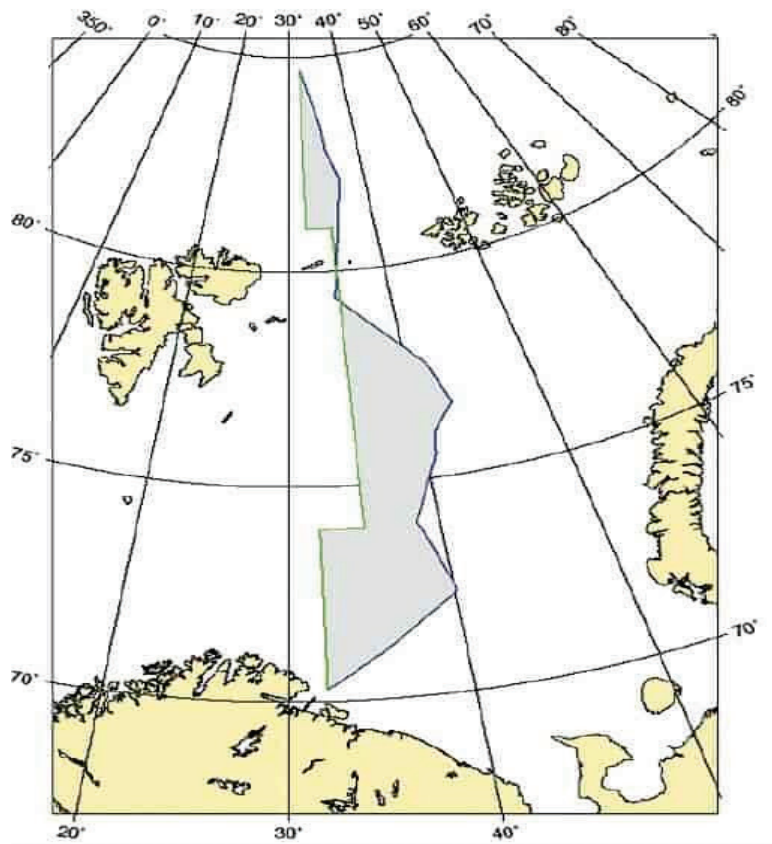
*Figure 2. The Finnmark Region of Norway ends in Norway’s easternmost territory at the Veranger Fjord. The Russian side of the fjord is largely off the map to the east*

In February 1957, Norway and the USSR signed an agreement to delimit the territorial sea in the Varanger Fjord, dividing the waters roughly equally based on the different widths each country claimed for their territorial sea. They also agreed to delimit their continental shelves within the remainder of the fjord, using a line drawn from the terminus of the territorial sea frontier to the median point of a closing line drawn from the farthest point of land on opposite sides of the fjord.

In 1967, Norway first initiated discussions with the USSR to further delimit the Barents Sea continental shelf beyond their 1957 agreement,

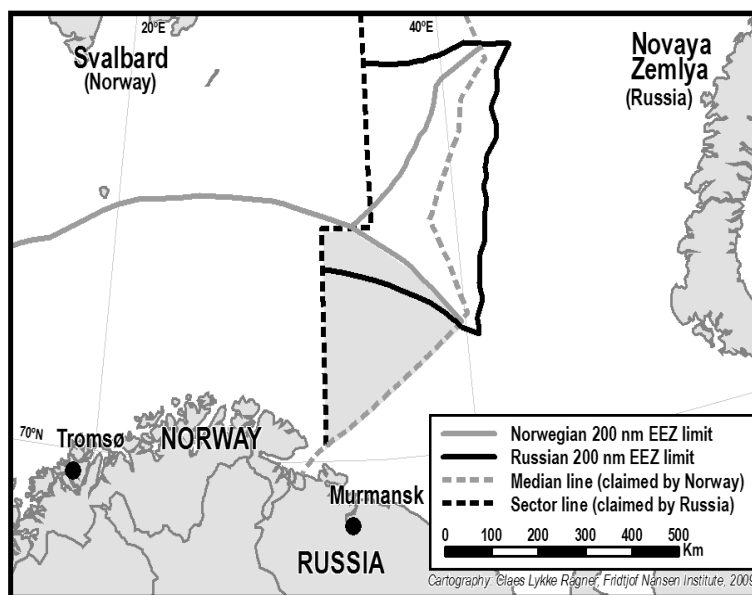
with Norway advocating for a median line delimitation based on the 1958 Continental Shelf Convention, while the Soviets argued for a sector line approach based on special circumstances. The disputed maritime area encompassed 155,000 square kilometers in the Barents Sea and an additional 20,000 square kilometers in the Arctic Ocean.

In October 1975, the Soviet and Norwegian governments negotiated an additional agreement to cooperate in the conservation and management of fish stocks, aiming to further existing mutual cooperation and develop good-neighborly relations. The agreement involved consultation on conservation measures, sharing information on fishing practices, and the establishment of a 'Mixed Commission' to plan and undertake cooperative efforts. This agreement built upon the pre-existing cooperation between Norway and the USSR through the 1959 Northeast Atlantic Fisheries Convention.



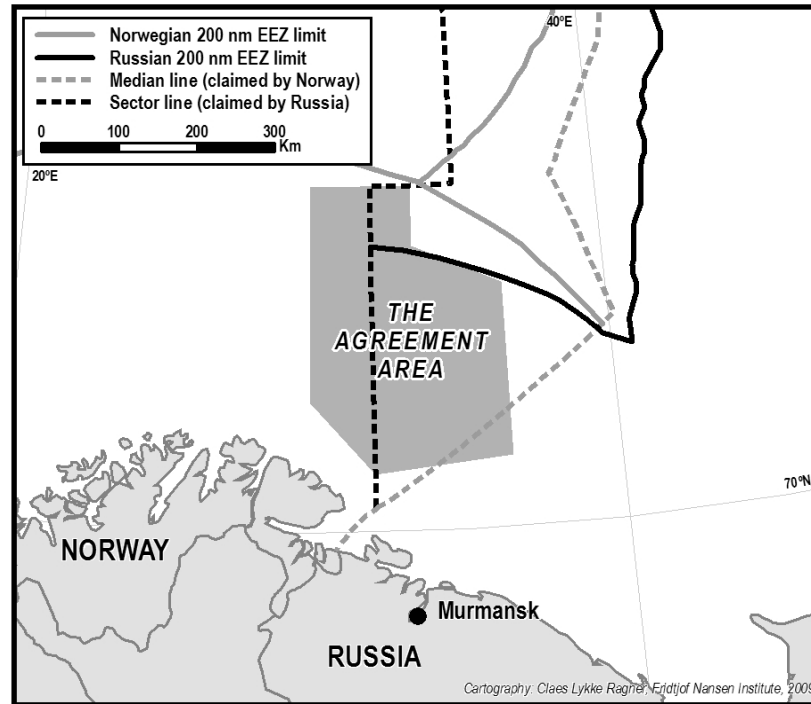
*Figure 3. The Soviet sector Line to the west (accounting for Svalbard's waters as granted under the Spitsbergen Convention) and Norway' median line to the east. The disputed area is approximately 175,000 square kilometers*

Despite the difficulties in delimiting the continental shelf, fisheries cooperation between Norway and the USSR progressed steadily. In 1976, they concluded a second fisheries treaty acknowledging the shared ecosystem of the Norwegian Sea and the Barents Sea and granting each other's fishermen access to a designated area beyond the 12-nautical mile limit. However, challenges arose with the overlap area and the high seas 'Loop Hole' prompting Norway to propose a provisional arrangement to address the pressing concerns while delimitation negotiations remained stalled.



*Figure 4. The 'Loop Hole' sits between the Norwegian EEZ limit and the Russian EEZ limit. The 'Grey Zone' sits between the Russian and Norwegian proposed boundaries to the limit of Norway's EEZ claim*

Despite strained relations between Norway and the USSR, negotiations took place from January to June 1977 to manage the Barents Sea fish stocks. The provisional arrangement established an area of parallel jurisdictional enforcement, predominantly on the Norwegian side of the median line, with separate designated areas under each country's jurisdiction. The agreement aimed to address concerns over resource management and stability while not prejudicing a final delimitation, although it remained a contentious issue in Norway for several decades.



*Figure 5. The Agreement Area to provisionally manage fish stocks pending final delimitation*

In 2007, Russia and Norway extended their territorial sea boundary in the Barents Sea to include the full extent of the Varanger Fjord, driven by the anticipation of hydrocarbon deposits. The agreement aimed to establish cooperation in the exploration and exploitation of transboundary hydrocarbon deposits in the seabed, as well as potential deposits extending beyond the agreed boundary.

The 2007 delimitation territorial sea agreement set the stage for a final agreement in 2010. This final agreement established a multifunctional boundary that largely followed a compromise between Norway's median line claim and Russia's sector line claim, resulting in a nearly equal division of the disputed area. It also established special areas in which Norway granted Russia jurisdiction beyond 200 nautical miles from the Russian coastlines to simplify the maritime boundary across the region.

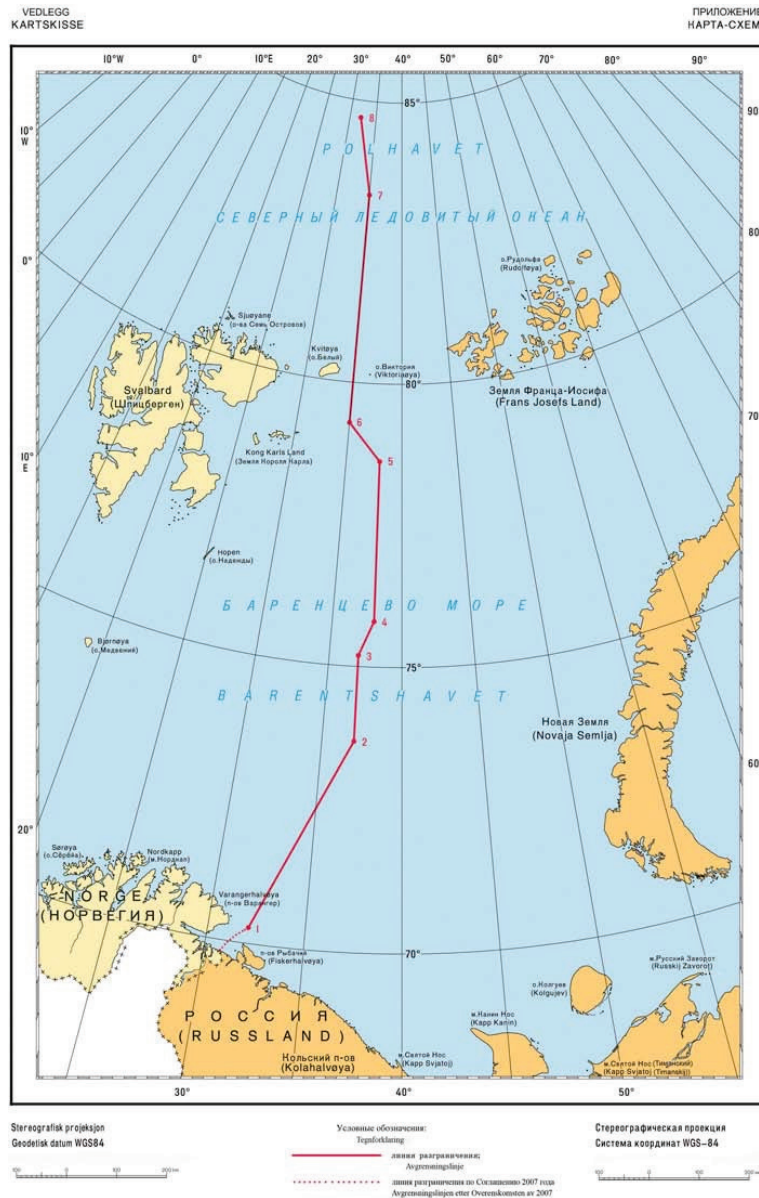


Figure 9. A depiction of the 2010 delimitation from the endpoint of the 2007 Vernger Fjord Agreement to the endpoint in the Arctic Sea. Delimitation beyond point 8 awaits the determination of the endpoint of each State’s extended continental shelf

## Section II – Analysis of Key Substantive Matters

The initial negotiations between Norway and the Soviet Union in 1974 were based on the 1958 Continental Shelf Convention, with Norway proposing a median line delimitation while the Soviet Union argued for a sector line based on special circumstances. When negotiations resumed in the late 1990s under UNCLOS, Russia still insisted on special

circumstances, including demographic and security concerns, but the final agreement was based on geographic factors and a compromise between the initial positions, with some Russian concerns addressed through cooperative arrangements for transboundary resources.

During a visit to Norway in 1988, the Soviet Prime Minister proposed a joint oil and gas operation in the disputed area, which Norway rejected due to concerns about being dominated in a shared arrangement. As a result, the treaty established a single maritime boundary that reflects Norway's preference for sovereignty, stability, and simplicity, while provisions in the agreement promote cooperation in fisheries management and the exploitation of transboundary hydrocarbons, finding a compromise between Norway's desire for a clear boundary and Russia's concerns for resource sharing.

The delimitation treaty emphasizes extensive cooperation in managing and conserving the living resources of the Barents Sea, with a particular focus on fisheries. The two states agreed to maintain their respective shares of catch volumes and ensure stability in fishing activities, while also applying the precautionary approach to protect marine resources and the environment. The treaty establishes the Norwegian – Russian Joint Fisheries Commission, which will continue to determine catch limits, allocate quotas, and improve monitoring and control measures.

The treaty between Norway and Russia includes provisions for the treatment of straddling hydrocarbon deposits, allowing either party to initiate discussions on their extent and the possibility of joint exploitation. A Unitization Agreement is to be negotiated to specify the boundaries and reserves of the transboundary deposit, with both parties requiring their respective oil and gas companies to enter into a Joint Development Agreement. Mutual inspection, consultation, and dispute resolution measures are established to foster collaboration and ensure binding decisions.

As noted above, in order to provide for a relatively straight boundary line,

article 3 of the treaty establishes a ‘Special Area’ in which an undisputed part of Norway’s EEZ is placed on the Russian side of the maritime boundary despite the area being beyond 200 nautical miles from the Russian baselines. In this area, Russia is granted sovereign rights and jurisdiction derived from Norway’s EEZ jurisdiction, without constituting an extension of the Russian EEZ. Norway prioritized a single maritime boundary and stability over maximal resource access, similar to the approach taken in the US – Soviet delimitation agreement in the Bering Sea and Arctic Ocean.

### Sections III and IV – Implementation and Conclusions

The treaty between Norway and Russia was ratified by the Norwegian Storting on February 8, 2011, and by the Russian Duma on March 25, 2011, with final approval from the Federation Council on March 30, 2011. The treaty entered into force on July 7, 2011. Despite the ongoing successful fisheries cooperation, sanctions imposed on Russia since its annexation of Crimea in 2014 have hindered the transfer of technologies required for the collaborative extraction of hydrocarbons on the Russian continental shelf.

Russia had a vested interest in expediting the delimitation negotiations with Norway due to the significance of clarifying the boundary to facilitate Russia’s claims to the Arctic continental shelf. A second factor driving the urgency of the delimitation negotiations between Russia and Norway was the economic importance of hydrocarbons to both countries. Russia and Norway were Europe’s top energy providers in 2010, and they sought to maintain and advance their positions. The potential vast hydrocarbon reserves in the Barents Sea, as estimated by the US Geological Survey, added to the incentive for reaching an agreement. Additionally, Norway was looking to the Barents Sea as a source of new discoveries as its traditional North Sea fields were in decline, and the rising price of hydrocarbons further motivated both sides to reach a resolution.

Several factors contributed to a positive political atmosphere and facilitated a successful conclusion to the delimitation negotiations between

Norway and Russia. These factors included shared views on international law, a history of engagement and cooperation between the parties, and a persistent approach of seeking good relations despite differences. The desire to maintain and strengthen good neighborly relations was consistently expressed throughout the process.

China's unconventional approach to international law of the sea poses significant challenges to its maritime neighbors, making it difficult to draw direct lessons from the Norway – Russia case. Unlike the Norway – Russia dispute, situations where there are disputes about fundamental aspects of the law are more complex and less amenable to incremental agreements. China's expansive historical claims and disregard for established international legal concepts in the South China Sea and East China Sea create obstacles to cooperation and delimitation. Disagreements over the applicability and interpretation of the law are at the core of these disputes, making them inherently intractable.



## **Case Study 3: Israel–Lebanon Maritime Delimitation Negotiation**

By Nax Hamouche

### **Section I – Introduction, Background, and Dispute Summary**

The maritime boundary dispute between Israel and Lebanon centers around the contested area of “Block 9” in the eastern Mediterranean, involving overlapping EEZ claims and potential offshore gas reserves. After years of seismic surveys, failed negotiations, and various developments, negotiations resumed in 2022 and led to the adoption of an agreement on October 27, 2022.

Israel and Lebanon are both interested in participating in the gas industry, but their confrontational relationship and Lebanon’s economic crisis, compounded by the Beirut Port explosion, have complicated the situation. Negotiations have taken place, with separate discussions on the maritime and land borders, due to disputed points and accusations of territorial encroachment by both sides.

## Israel & Lebanon Key Gas Infrastructure And Overlapping Border Claims

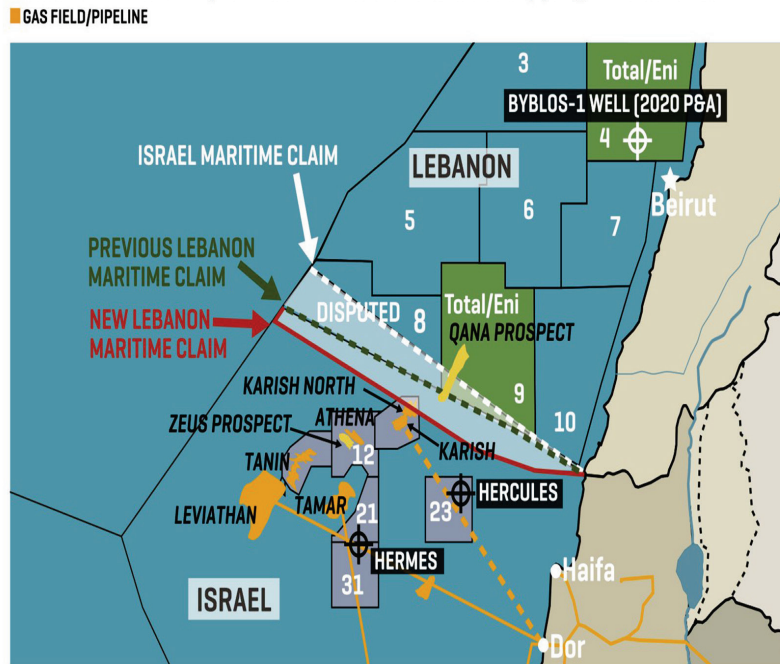


Figure 1. Location of the Israeli gas fields of Tamar and Leviathan that were proved to contain hydrocarbon reserves

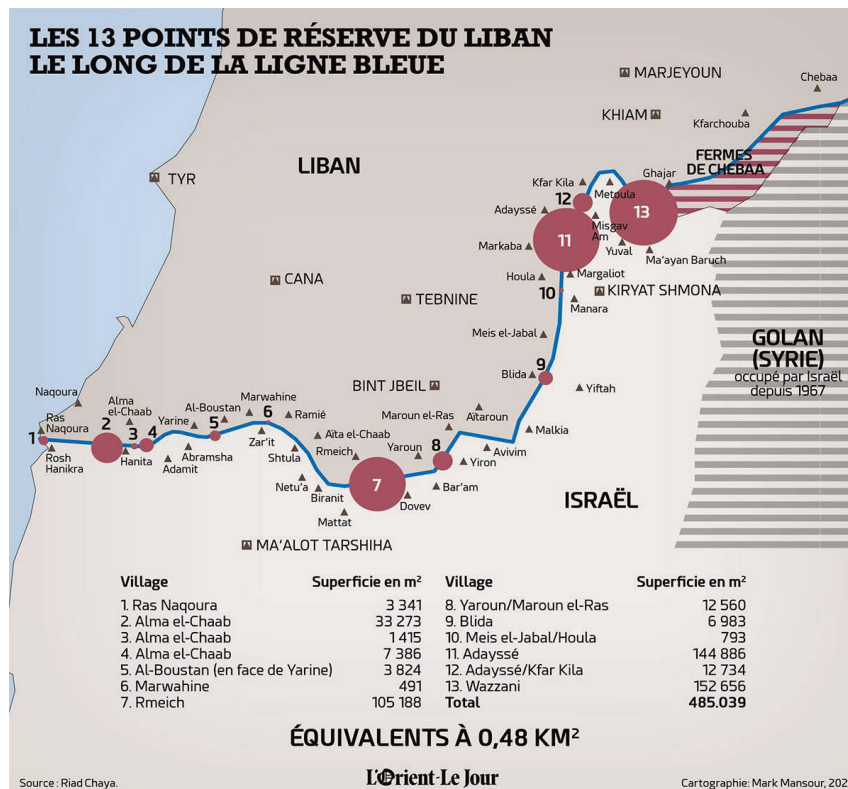


Figure 2. The 13 land border points on which Lebanon originally insisted

The maritime boundary dispute between Israel and Lebanon originated in 2010. Both parties had an implicit agreement, but tensions arose when Lebanon contested the location of the tripartite border of its EEZ and adopted different reference points for the border with Israel. The Israeli Defense Forces placed buoys in the disputed waters, following Lebanon's pre-2009 claims but not crossing the Line on Point 1. These differences in claims and interpretations have added complexity to the dispute. Lebanon claimed that the tripartite EEZ boundary is not at Point 1 of its border with Cyprus because it has never ratified the Lebanon – Cyprus border agreement of 2007, but at Point 23, as determined in April 2009 by a Lebanese parliamentary commission.

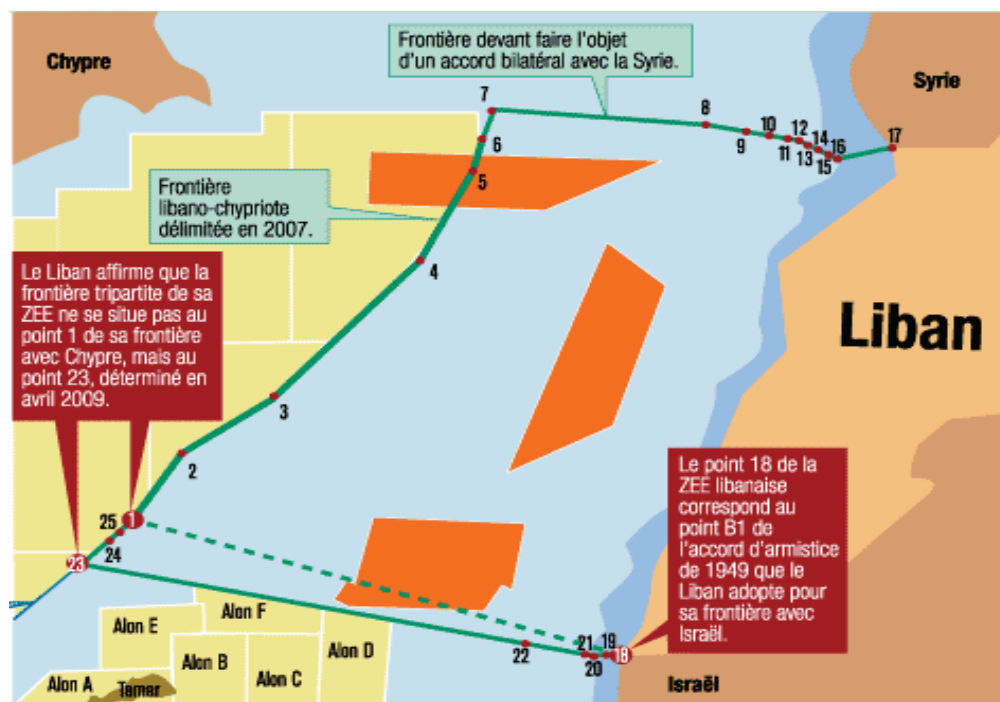


Figure 3. Location of Point 1 and Point 23

In 2012, Lebanon and Israel had a dispute over an 860 square kilometers area between Line 23 claimed by Lebanon and Line 1 claimed by Israel. American diplomat Frederic Hof proposed a demarcation line called Line H, which allocated 55% to Lebanon and 45% to Israel. However, this proposal was not accepted by either side, particularly Lebanon, due to concerns about its compliance with international law.

## The maritime border dispute between Lebanon and Israel

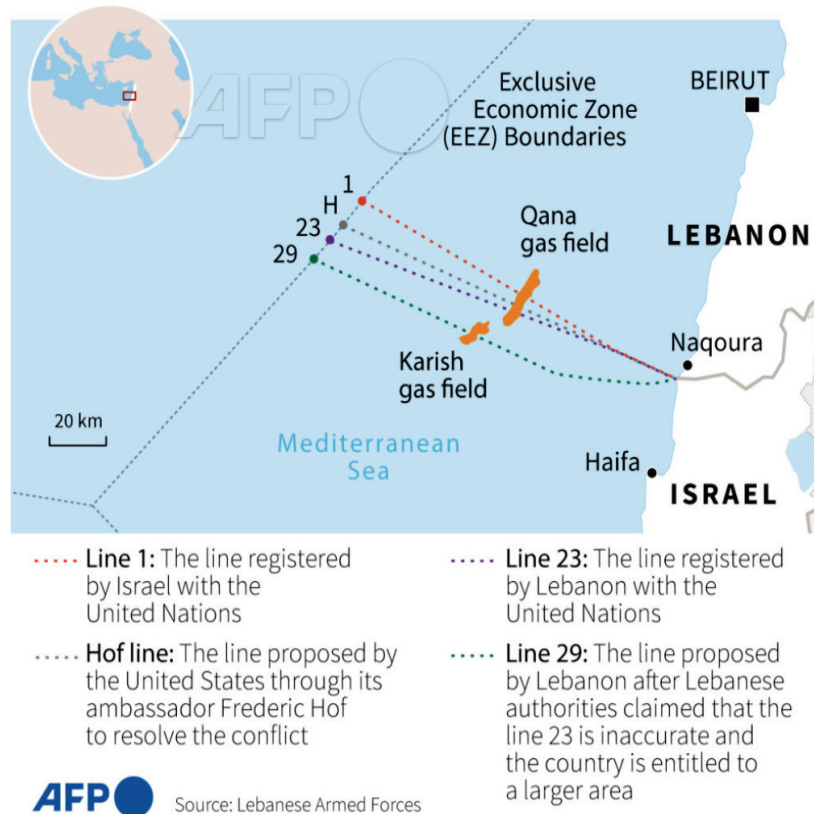


Figure 4. Location of the Line 23, Line 1, and Line H

Due to an impending global economic crisis, Israel and Lebanon entered negotiations in October 2020, with the United Nations and the United States taking prominent roles. However, the discussions faced challenges when Lebanon expanded its EEZ claims by 1430 square kilometers in December 2020, leading to a breakdown in the negotiations. A subsequent meeting in May 2021 did not result in substantial progress.

Israel and the United States, the mediator, have not ratified UNCLOS, while Lebanon has. The proposed Line H deviated from traditional UNCLOS delimitations, including the starting point at sea and the consideration of uninhabited rocks, leading to ongoing disputes between Israel and Lebanon over gas fields and territorial claims. Factors further weakening Lebanon’s negotiating position include that Israel has normalized relations with several countries and is strengthening informal

ties with Saudi Arabia, while Lebanon faces an economic crisis and energy dependence and the influence Iran and Hezbollah exert in the region.

The war in Ukraine and subsequent disruption of global energy supplies prompted the United States to mediate a maritime border deal, with negotiations taking place between September and October 2022. The US exerted pressure on both parties to reach an agreement that could potentially help address the Iranian nuclear issue and coincide with the Israeli elections in November 2022.

By October 2022, negotiations had resolved most issues, except for one remaining point of ambiguity. This unresolved matter revolved around the disputed “line of buoys” claimed by Israel, which extends from Point 31 along the coast and intersects with Line 23. Israel sought to safeguard the security of the Rosh Hanikra tourist settlements, while Lebanon maintained its claim to Point B1 as the starting point of its southern border. Lebanon’s main goal in negotiations was to protect all the revenues from the Qana Prospect, but a portion was nonetheless allocated to Israel due to the intersecting Line 23.

Further complicating negotiations was the fact that Lebanon does not recognize the existence of Israel as a state and it refused to negotiate directly with them. To bridge the gap, Total energy company was appointed by Lebanon to exploit Block 9 and handle the remuneration to Israel of its portions of the profits.

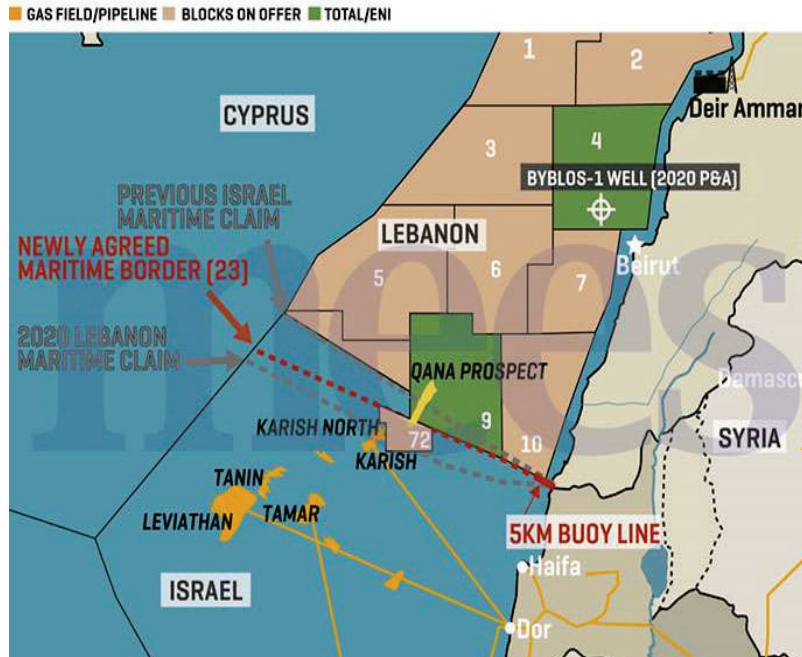


Figure 5.

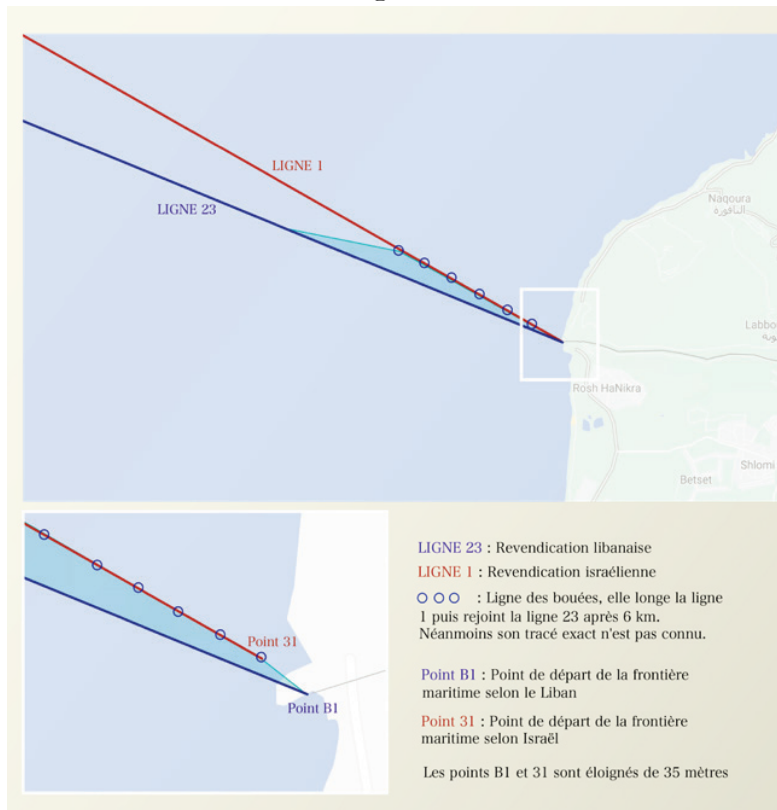


Figure 6. Location of the “line of buoys” marking an area of between 2.5 and 4 km<sup>2</sup> claimed by Israel

The exploitation of the Qana Prospect is expected to take 3 to 10 years after the agreement. Lebanon is under pressure to swiftly adopt the agreement due to the ongoing economic crisis, which influenced Hezbollah's decision-making to support the deal, likely with Iran's approval. The agreement reached depended on reducing tensions between Iran on one side and the US and Israel on the other, presenting an opportunity to revive the P5+1 nuclear deal. Hezbollah chose a path to minimize the likelihood of another war with Israel in order to avoid engaging in conflict from a weakened position, emulating Syria's strategy after the 1973 armistice.

### Section II – Adoption of the Agreement

Negotiations faced a potential collapse in October 2022 due to amendments introduced by Lebanon, but alternative amendments proposed by the American intermediary Amos Hochstein, who replaced Frederic Hof, were eventually adopted. Israel achieved its desired outcomes regarding the “line of buoys” and financial compensation, while Lebanon had to acknowledge the “line of buoys” in the Agreement and rely on third-party mediation for dispute resolution, introducing potential risks to its future development. President Macron's interventions also smoothed out difficulties in the negotiations, with France's more favorable relationship with Hezbollah enabling an open dialogue and the advancement of Total Energies' interests.

### Sections III and IV – Observations and Conclusions

The agreement reached on the Qana Prospect required both states to renounce unilateral action and to agree to implement a system of prior notification and coordination, aligning with regional practices and customary international law. However, the agreement lacks specificity about how to manage potentially failed negotiations, unitization and dispute resolution, and cooperation in the case of an environmental disaster.

The agreement has implications for pre-existing delimitations and requires revisions to the Israel-Cyprus and Lebanon-Cyprus agreements, while offering potential benefits for Israel, Lebanon, and Cyprus, despite threats from Hezbollah and Prime Minister Netanyahu.

This case offers four important lessons:

First, it demonstrates that States in a state of war or enmity can still reach agreements, highlighting the potential for diplomacy and negotiations to overcome conflict.

Second, it reveals that the prominence of domestic factors can pose challenges and potentially lead to the breakdown of agreements, underscoring the need for careful consideration and management of these factors.

Third, in the event that an agreement cannot be reached, temporary measures can be implemented to share the exploitation of resources, allowing for some level of cooperation and benefit.

Finally, the case emphasizes the significance of a trusted third party in facilitating discussions, serving as a mediator or facilitator to build trust, provide objective guidance, and ensure a fair and balanced negotiation process.



## Case Study 4: Sino–Vietnam Gulf of Tonkin Delimitation Negotiation

By Isaac B. Kardon

### Section I – Introduction, Background, and Dispute Summary

The Gulf of Tonkin/Beibu Gulf is a semi-enclosed area in the northwestern part of the South China Sea, bordered by China and Vietnam. It is relatively shallow, has two outlets to the South China Sea, and contains numerous small islands and features, including White Dragon Tail Island.

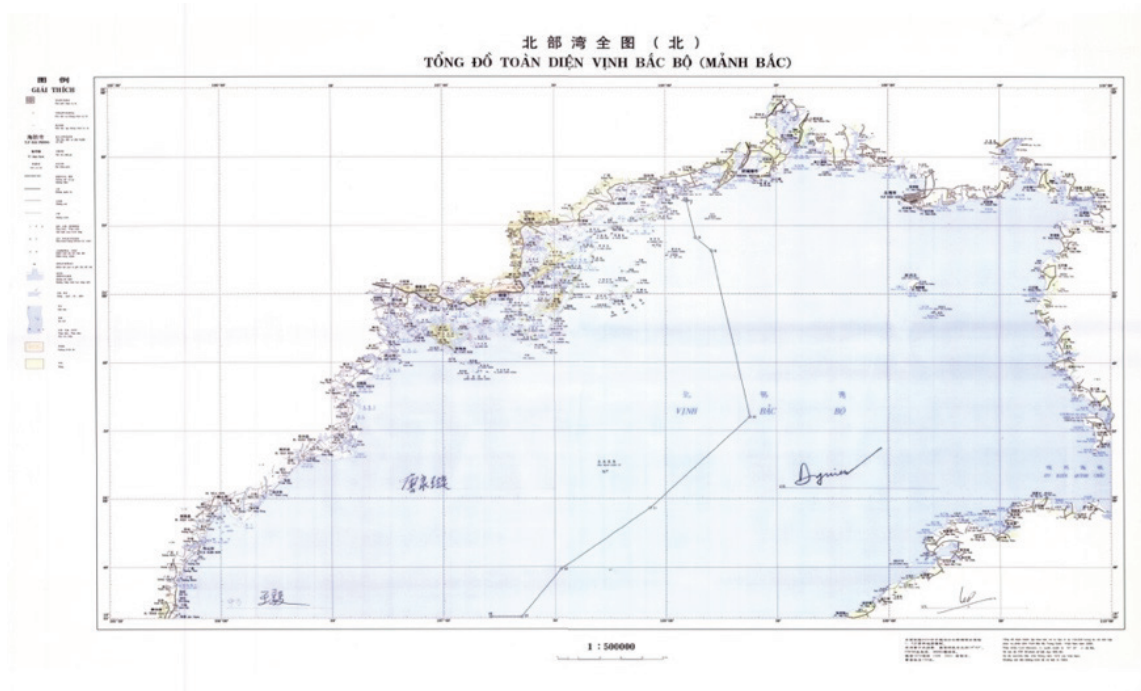


Figure 1. Beibu Gulf – Bac Bo Gulf

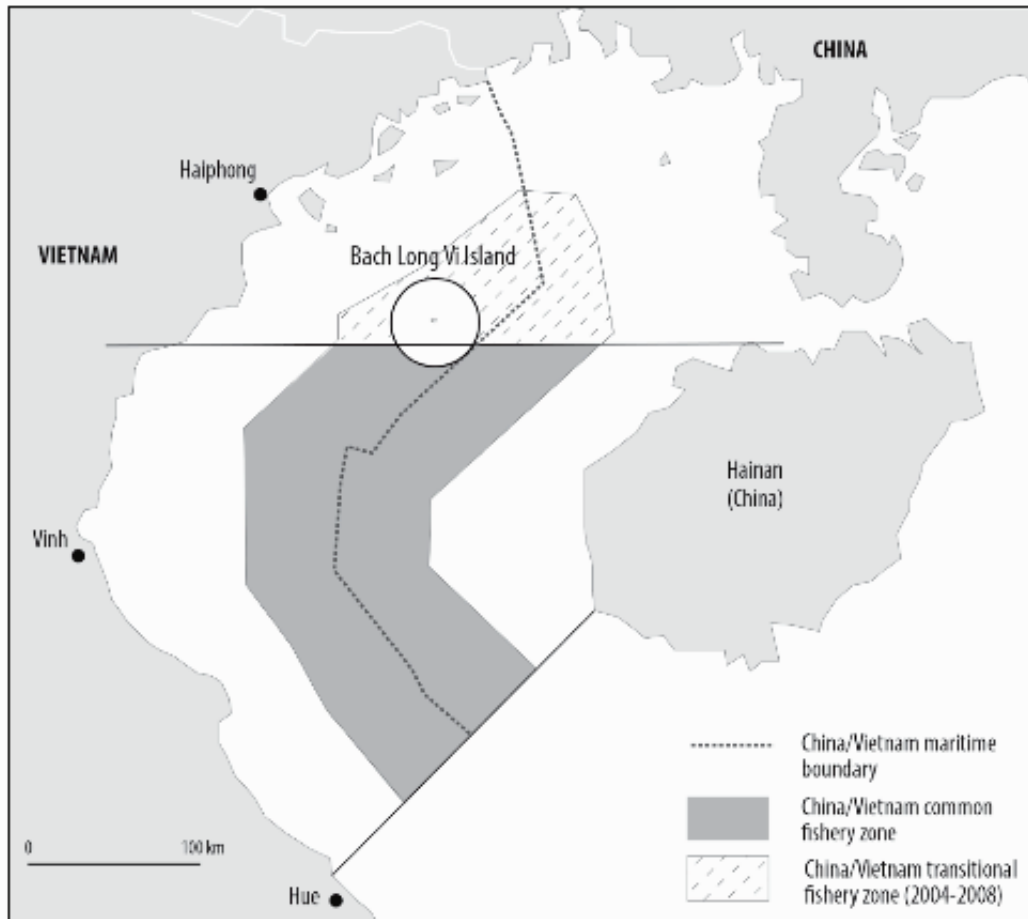


Figure 2

The Sino-Vietnamese border in the Gulf of Tonkin was demarcated by the Sino-French Treaty of 1887, with 38% of the Gulf's area attributed to China's Qing dynasty and 62% to French Indochina's protectorate, Annam. Over the years, there were territorial changes, including Japan's annexation of the Paracel Islands in 1938, the involvement of various parties during World War II, and China's occupation of Woody Island. Negotiations between China and Vietnam regarding the delimitation of the Gulf of Tonkin began in 1991 and culminated in the signing of the Maritime Boundary Agreement in 2000, establishing a boundary separating Chinese and Vietnamese maritime jurisdiction in the Gulf.

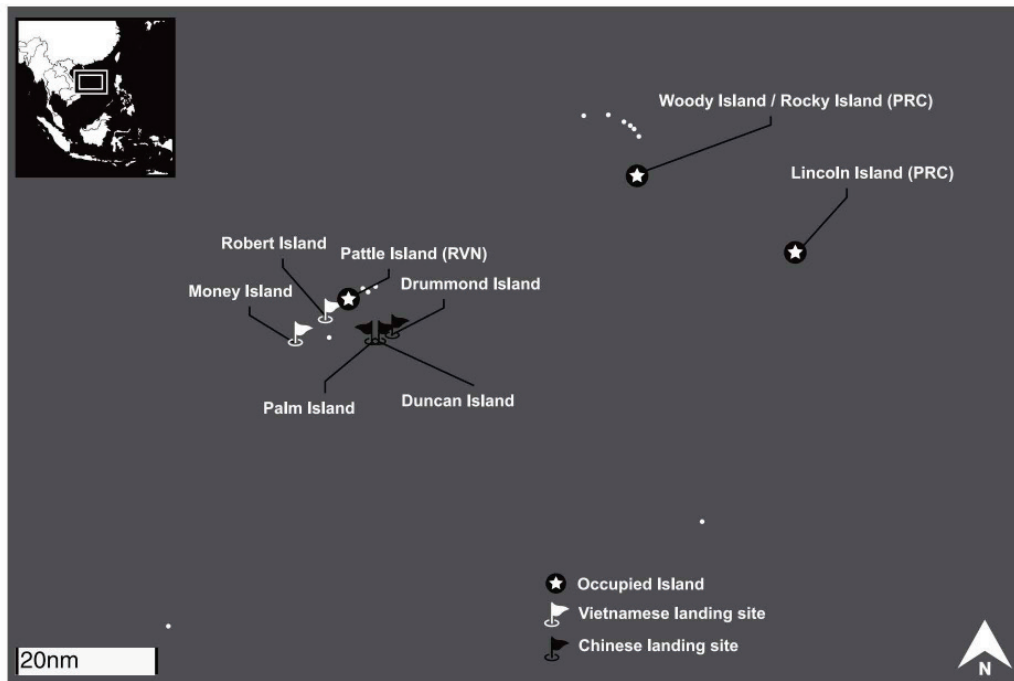


Figure 3.4 Battle of the Paracels starting positions, January 18, 1974. Created using Mapcreator and OpenStreetMap.

Figure 3

## Section II – Analysis of Key Substantive Matters

Between 1993 and 2000, China and Vietnam engaged in extensive negotiations involving government-level meetings, nonofficial discussions, working groups, and expert groups to address territorial and boundary issues in the Gulf of Tonkin. These negotiations aimed to reach agreements on various important matters.

The agreement on boundaries between China and Vietnam in the Gulf of Tonkin was based on the principle of equality and was not a strict application of delimitation rules. Both parties emphasized the concept of equity and equitable principles in accordance with UNCLOS. The delimitation resulted in Vietnam obtaining 53.23% of the area while China obtained 46.77%, with a difference of approximately 8,000 square kilometers. The specific influence of straight or low-water baselines on the

agreed-upon boundary is unclear, although some segments may have been influenced by straight baselines drawn by China for Hainan Island.

The agreement between China and Vietnam established a 506km line comprising 21 specific geographic points that define their single maritime boundary. The first nine points delineate the boundary of their territorial seas, including internal waters in the Beilun estuary. The remaining points, from 9 to 21, delimit the boundary of their EEZ and continental shelf up to the southern end.

The maritime boundary agreement between China and Vietnam was accompanied by a fisheries agreement. This agreement established a Common Fishery Zone, covering approximately 30,000 square kilometers, which includes the productive fishing grounds in the Gulf of Tonkin. The establishment of this zone aimed to address conflicts and issues related to fishermen and fisheries law enforcement from both countries, making it a significant practical aspect of the overall negotiations. In comparison to the Sino-Japanese Fishery Agreement in the East China Sea, the China-Vietnam Common Fishery Zone is much larger in size.

According to Article VII of the agreement, if any petroleum, natural gas, or mineral deposit extends across the delimitation line, China and Vietnam will engage in friendly consultations to determine the most effective way to exploit the resource and share the resulting benefits equitably. This agreement was reached despite both Chinese and Vietnamese companies submitting international bids for the same oil blocks in the southern parts of the South China Sea. The establishment of a single boundary for the EEZ and continental shelf allows for clear assignment of sovereign rights to resources on each side of the boundary line.

In the maritime delimitation, White Dragon Tail Island (Bạch Long Vĩ) was granted a 12 nautical miles territorial sea and a 3 nautical mile EEZ, while Con Co Island received a partial effect in the delimitation, described as a 25% and 50% effect. The islands of Bai Su Yan (China), Chang Dong

(Vietnam), and Chang Tay (Vietnam) also had some influence on the delimitation of the territorial sea. This willingness to assign partial entitlement to small islands sets an important precedent, especially when considering the prospects of negotiating boundaries in areas involving potential entitlements from the Paracel and Spratly Islands. China currently claims full entitlements from these islands, despite conflicting with the maritime zone entitlements of other neighboring countries along their mainland coastlines.

### Sections III and IV – Implementation and Conclusions

In June 2004, the Maritime Boundary and Fishery Agreements between China and Vietnam came into effect. In 2006, expert-level talks were held to discuss the delimitation of the maritime area outside the Gulf of Tonkin. In 2011, amidst increased tensions in the South China Sea, China and Vietnam signed the Agreement on the Basic Principles Guiding the Settlement of Maritime Issues. This agreement addressed issues related to fishing vessels, maritime law enforcement, and oil and gas exploration. In 2013, during a state visit by Vietnam's president to Beijing, agreements were signed to extend the common zone, promote joint energy exploration, establish hotlines for fishing incidents at sea, and enhance bilateral exchanges and working group activities.

The Gulf of Tonkin's boundary agreement was designed to avoid territorial sovereignty disputes, as the northern areas had no such conflicts. The southernmost point of the agreed boundary is approximately 200 nautical miles away from China's claims around the Paracels, and the unresolved sovereignty of the Paracels has hindered further extension of the maritime boundary. The resolution of the land border between China and Vietnam in 1999 played a crucial role in facilitating the successful negotiation process.

The bilateral nature of the dispute between China and Vietnam played a significant role in China's commitment to seeking a negotiated settlement. Both countries underwent a convergence of leadership and interests in the 1990s, which facilitated progress on maritime and boundary issues.

However, recent developments, such as Vietnam's assertion of international law over domestic claims and its potential pursuit of arbitration, indicate a shift in their previously aligned preferences on UNCLOS issues.

The period from 1992 to 2000, during which the negotiations between China and Vietnam took place, was marked by a geopolitical opportunity. This was due in part to China being in a phase of strategic advantage, with the United States and its allies being relatively uninvolved in East Asia and showing limited interest in regional sovereignty and maritime disputes. The implications of the current situation, where China perceives containment as US policy, are uncertain and warrant further discussion.



U.S.-ASIA LAW INSTITUTE  
NEW YORK UNIVERSITY SCHOOL OF LAW