

Senate Standing Committee on Foreign Affairs, Defence and Trade

Inquiry into Australia's declarations under certain international laws

October 2019

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Executive Summary

Australia is one of 74 United Nations member states that have accepted the compulsory jurisdiction of the International Court of Justice (ICJ) and has appeared as both an applicant and respondent in proceedings before the court. Article 36 (2) ICJ declarations are consistent with the Statute of the ICJ and are a means to accept the compulsory jurisdiction of the court. Most recently, in 2013 Timor-Leste commenced proceedings in the court against Australia over the seizure of certain documents and data. As a party to the 1982 United Nations Convention on the Law of the Sea (UNCLOS), Australia has also accepted compulsory dispute settlement of law of the sea disputes. Australia's acceptance of both ICJ and UNCLOS compulsory jurisdiction is subject to certain permissible limitations. Australia's stated position and practice is that it seeks to delimit maritime boundaries with its neighbours by negotiation and this approach has resulted in innovative maritime boundaries settled by agreement. Notwithstanding Australia's preferred position, as a party to the UNCLOS Australia still remains subject to compulsory conciliation under Article 298. Timor-Leste was able to successfully utilise compulsory conciliation under the UNCLOS to facilitate negotiation with Australia of the 2018 Timor Sea Treaty. That Treaty contains its own detailed procedures for dispute settlement that would apply if disputes arose as to its interpretation and application. Australia is also subject to other international obligations under UNCLOS and the Charter of the United Nations for the peaceful settlement of its maritime boundaries with neighbouring States.

A. Introduction

1. Australia's declarations made under Article 36(2) of the 1945 Statute of the International Court of Justice (Statute of the ICJ and ICJ respectively) and Articles 287(1) and 298(1) of the 1982 United Nations Convention on the Law of the Sea

(UNCLOS)¹ on 22 March 2002 reflect the Australian Government's longstanding preference for the settlement of maritime boundary disputes through negotiation rather than litigation.²

2. Australia's declaration under the Statute of the ICJ allows another State, which has also made an Article 36(2) 'optional clause' declaration, to bring disputes with Australia before the court without prior consent, provided that the dispute falls within the terms of the declaration. Under Australia's current declaration, there are three circumstances in which disputes will fall outside the compulsory jurisdiction of the ICJ:
 - i) where the parties have agreed to other peaceful means of dispute resolution;
 - ii) where disputes concern or relate to the delimitation of maritime zones; or,
 - iii) where a country has accepted the compulsory jurisdiction of the court only for a particular purpose or has accepted the compulsory jurisdiction of the Court for a period of less than one year.³
3. In the case of UNCLOS, Part XV of the Convention provides for compulsory dispute settlement. As a party to the Convention, which Australia ratified in 1994, Australia is subject to certain procedures for the compulsory settlement of certain law of the sea disputes. Australia's Article 287 choice of procedure declaration made in 2002 indicates a preference for dispute settlement by the ICJ or the International Tribunal for the Law of the Sea (ITLOS). In addition, Australia has also indicated by way of an Article 298 declaration that certain disputes with respect to sea boundary delimitations, historic bays or titles are exempted from certain UNCLOS, Part XV compulsory dispute settlement procedures.

B. Australia's Declarations under Article 36 of the Statute of the International Court of Justice

Background: 1954-2002

4. Australia has long been a supporter of the ICJ and since 1954 has consistently had in place an Article 36(2) 'optional clause' Statute of the ICJ declaration. Currently only 74 of 193 total members of the United Nations have accepted the compulsory

¹ [1994] Australian Treaty Series 31.

² *Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, under Article 36, Paragraph 2, of the Statute of the Court*, 2175 UNTS 493 (signed and entered into force 21 March 2002) (Declarations).

³ *Ibid.*

jurisdiction of the court. That is a total of 38 per cent of United Nations members. Of the five permanent members of the United Nations Security Council, only the United Kingdom accepts the compulsory jurisdiction of the court. Within Australia's region of Southeast Asia and the Southwest Pacific only New Zealand, the Philippines, and Timor-Leste accept the compulsory jurisdiction of the court.

5. Australia's 1954 Declaration supplanted Australia's earlier acceptance of the compulsory jurisdiction of the predecessor court, the Permanent Court of International Justice.⁴ The 1954 Declaration contained several substantial reservations, such as the exclusion of disputes concerning the continental shelf.⁵ These reservations were later removed by the 1975 Declaration, which constituted a general submission to the compulsory jurisdiction of the ICJ.⁶ The 1975 declaration remained operative until 22 March 2002, when it was modified by the current declaration to exclude *inter alia* 'disputes concerning or relating to the delimitation of maritime zones'.⁷
6. The 2002 declaration reflected Australia's desire to resolve maritime boundary disputes through negotiation. At that time, Australia was in active negotiations over maritime boundary delimitation with New Zealand and Timor-Leste and was concerned about possible disputes over Antarctic maritime boundaries with Norway, France and New Zealand.⁸ Within this context, Australia drafted the reservation in broad language so as to cover all the potentially associated disputes that could arise in a delimitation situation as between the parties to the delimitation.⁹ In relation to public concerns regarding negotiations with Timor-Leste

⁴ *Declaration by Australia Recognizing as Compulsory the Jurisdiction of the International Court of Justice, in Conformity with Article 36, Paragraph 2, of the Statute of the International Court of Justice*, 186 UNTS 77 (signed and entered into force 6 February 1954) (1954 Declaration); James Crawford, "Dreamers of the Day": Australia and the International Court of Justice' (2013) 14(2) *Melbourne Journal of International Law* 520, 538-539.

⁵ 1954 Declaration; above n Crawford.

⁶ *Declaration Recognizing as Compulsory the Jurisdiction of the International Court of Justice, in Conformity with Article 36, Paragraph 2, of the Statute of the International Court of Justice*, 961 UNTS 183 (signed and entered into force 13 March 1975) (1975 Declaration); above n Crawford; Henry Burmester, 'Australia and the International Court of Justice' (1996) 17 *Australian Year Book of International Law* 19, 20, 30.

⁷ Declarations.

⁸ 'Verbatim Record', *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening) (Judgment)* (International Court of Justice, General List No 148, 28 June 2013) (Henry Burmester), [20]; Attorney-General Daryl Williams and the Minister for Foreign Affairs Alexander Downer, 'Changes to International Dispute Resolution' (News Release, 25 March 2002), [4.28].

⁹ 'Verbatim Record', *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening) (Judgment)* (International Court of Justice, General List No 148, 28 June 2013) (Henry Burmester), [22].

over maritime boundaries, the Joint Standing Committee on Treaties when explaining the reason for the Declarations concluded that, 'the general principle of direct negotiations of maritime boundaries between the parties involved is, in the Committee's view, preferable to litigation or arbitration'.¹⁰ The Committee further emphasized that 'East Timor has indicated its keenness to negotiate as a means of resolving these issues' and 'an agreed outcome is more likely to have long-term relevance for the parties involved, as opposed to an imposed decision that results in a win-lose situation for one of the negotiating parties'.¹¹ In light of the successful outcome of the recent conciliation between Australia and Timor-Leste over their maritime boundaries, the rationale underlying the adoption of the declaration remains relevant today.

Scope of the ICJ Declaration

7. Australia's 2002 ICJ declaration is limited to 'disputes about delimitation of maritime boundaries, including disputes connected to such delimitation', as explained in the *Whaling* case¹² by Mr Henry Burmester AO QC, Special Counsel of the Australian Government Solicitor.¹³ Associated disputes include *inter alia* 'those concerning exploitation of resources, pending delimitation'.¹⁴ The reservation therefore did not apply in the *Whaling* case, as that case did not concern maritime delimitation but rather Japan's international law obligations under the 1946 Whaling Convention.¹⁵ Drawing on the press release issued by the Australian Government on the Declarations¹⁶ and evidence by Australian Government officials to a parliamentary committee explaining the reason for the Declarations,¹⁷ Mr Burmester explained that, '[t]he fundamental policy behind the

¹⁰ Attorney-General Daryl Williams and the Minister for Foreign Affairs Alexander Downer, 'Changes to International Dispute Resolution' (News Release, 25 March 2002), [4.29].

¹¹ Joint Standing Committee on Treaties, Report 47 (2002) 24 [4.29].

¹² *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening) (Judgment)* (International Court of Justice, General List No 148, 31 March 2014).

¹³ 'Verbatim Record', *Whaling in the Antarctic (Australia v Japan: New Zealand Intervening) (Judgment)* (International Court of Justice, General List No 148, 28 June 2013) (Henry Burmester), [17].

¹⁴ *Ibid* [44].

¹⁵ *International Convention for the Regulation of Whaling*, opened for signature 2 December 1946, 161 UNTS 74 (entered into force 10 November 1948).

¹⁶ Attorney-General Daryl Williams and the Minister for Foreign Affairs Alexander Downer, 'Changes to International Dispute Resolution' (News Release, 25 March 2002).

¹⁷ Commonwealth, *Parliamentary Debates*, Joint Standing Committee on Treaties, 12 July 2002 (William Campbell) TR 49.

reservation was Australia's belief that its overlapping maritime claims are best resolved through negotiations'.

8. Reservations to the jurisdiction of the ICJ of this nature are not uncommon. Of the 74 states that have made optional clause declarations, the majority have made reservations, and 17 have made similar reservations relating to the law of the sea or delimitations of territorial or maritime boundaries. States that have made similar reservations regarding maritime boundary disputes include *inter alia* Greece, Bulgaria, India and Pakistan. For instance, Pakistan's optional clause declaration excludes 'any dispute about the delimitation of maritime zones, including the territorial sea, the exclusive economic zone, the continental shelf, the exclusive fishery zone and other zones of national maritime jurisdiction or the exploitation of any disputed area adjacent to any such maritime zone'.¹⁸
9. Accordingly, Australia's reservation to its declaration under Article 36 of the Statute of the ICJ with respect to maritime boundaries remains appropriate in light of comparative state practice and the Australian Government's preference for the resolution of maritime boundary disputes by negotiation.

C. Australia's declarations under Articles 287(1) and 298(1) of UNCLOS

10. The dominant international legal instrument with respect to the modern law of the sea is the 1982 United Nations Convention on the Law of the Sea (UNCLOS).¹⁹ UNCLOS has a total of 168 state parties and has been in force since 16 November 1994. Australia ratified UNCLOS on 5 October 1994. A feature of the Convention is that it includes detailed provisions with respect to dispute settlement in Part XV. Those provisions can be generally divided into two forms:

- i) General provisions for dispute settlement; and,
- ii) Compulsory procedures entailing binding decisions.

The first of these provisions reflect general procedures and mechanisms for dispute settlement and complement the range of measures referred to in Article 33 of the Charter of the United Nations.

11. With respect to the compulsory procedures, a number of fora have recognised competence to resolve disputes arising under Article 287 UNCLOS. These include:
 - i) The International Tribunal for the Law of the Sea (ITLOS);
 - ii) The ICJ;

¹⁸ Declarations.

¹⁹ [1994] ATS 31.

- iii) An Annex VII Arbitral Tribunal; and,
- iv) An Annex VIII Special Arbitral Tribunal.

Article 287 assumes that a State will make an election as to which of these means of dispute settlement it prefers by way of an Article 287 declaration. If the parties to a dispute have accepted the same procedure for the settlement of the dispute, unless the States otherwise agree, that procedure will prevail.²⁰ However, if a party to a dispute has not made a declaration, they are deemed to have accepted arbitration in accordance with Annex VII and accordingly the matter would arise before an Annex VII Arbitral Tribunal.²¹ If the parties have also not accepted the same procedure for the settlement of the dispute, then the dispute may be submitted to an Annex VII Arbitral Tribunal unless the parties otherwise agree.²² A total of 52 of a possible 168 UNCLOS parties have made declarations under Article 287.

12. Australia has made an Article 287 declaration indicating its preference for either the ICJ or the ITLOS as the forum for resolution of disputes that arise under UNCLOS. However, this does not exempt other bodies from resolving UNCLOS disputes that Australia may be involved in as occurred when Australia along with New Zealand referred a dispute over Southern Bluefin Tuna to an Annex VII arbitral tribunal,²³ and as occurred when Timor-Leste commenced compulsory conciliation proceedings against Australia before an Annex V conciliation commission.²⁴
13. The Part XV UNCLOS provisions with respect to compulsory dispute settlement also permit parties to exempt themselves from being subject to certain forms of dispute settlement with respect to a small category of disputes as outlined in Article 298. These so-called 'optional exceptions' require a party to make a declaration under which they can exempt themselves from certain Part XV procedures with respect to all or some of the disputes referred to in Article 298. In the absence of such a declaration, the party remains subject to general UNCLOS Part XV dispute settlement mechanisms. Those disputes to which Article 298 refers include:

²⁰ Article 287(4), UNCLOS.

²¹ Article 287(3), UNCLOS.

²² Article 287(5).

²³ *Southern Bluefin Tuna* (New Zealand v Japan; Australia v Japan) (jurisdiction and admissibility) (2000) 119 ILR 508.

²⁴ *In the Matter of a Conciliation before a Conciliation Commission Constituted Under Annex V to the 1982 United Nations Convention on the Law of the Sea between the Democratic Republic of Timor-Leste and the Commonwealth of Australia*, PCA Case No 2016-10, Report and Recommendations of the Compulsory Conciliation Commission between Timor-Leste and Australia on the Timor Sea (9 May 2018) www.pca-cpa.org.

- a) Disputes concerning the interpretation or application of Articles 15, 74 and 83 relating to sea-boundary delimitations, or those involving historic bays or titles;
- b) Disputes concerning military activities; and,
- c) Disputes in respect of which the United Nations Security Council is exercising oversight.

A total of 41 UNCLOS parties have made Article 298 declarations, of which 36 have made declarations which expressly or by implication seek to exclude that category of disputes relating to sea boundaries, historic bays, or titles identified in Article 298(1)(a). Australia has made an Article 298 declaration with respect to Article 298(1)(a).

D. Australia and Dispute Settlement Practice regarding Maritime Boundaries

14. Australia's practice with respect to the resolution of maritime boundaries has been to seek to settle those boundaries by way of negotiation. The delimitation of maritime boundaries by agreement is the primary means of maritime boundary delimitation as reflected in Articles 15, 74, 83 of UNCLOS. Only if States are unable to determine their maritime boundaries by agreement 'within a reasonable period of time' do the Part XV dispute settlement procedures apply.²⁵ The UNCLOS therefore assumes that the parties will be able to settle their maritime boundaries by agreement, and only in the absence of agreement do the procedures for Part XV dispute settlement apply.
15. Australia's consistently stated position has been that it prefers to settle its maritime boundaries by agreement and this view has been asserted by Australian Foreign Ministers and Australian government legal officials. All of Australia's maritime boundaries have been settled by agreement over the period 1971 – 2018. This includes the recently concluded 2018 Timor Sea Treaty²⁶ which resulted from the 2016-2018 Timor Sea conciliation and was overseen by a Conciliation Commission,²⁷ but ultimately was a treaty negotiated by the parties with facilitation

²⁵ Articles 74(2), 83(3) UNCLOS.

²⁶ Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea, done in New York on 6 March 2018 [2019] ATS 16.

²⁷ *In the Matter of a Conciliation before a Conciliation Commission Constituted Under Annex V to the 1982 United Nations Convention on the Law of the Sea between the Democratic Republic of Timor-Leste and the Commonwealth of Australia*, PCA Case No 2016-10, Report and Recommendations of the Compulsory Conciliation Commission between Timor-Leste and Australia on the Timor Sea (9 May 2018) www.pca-cpa.org.

assistance from the Commission. In this respect it is important to note that the Timor Sea Treaty was signed on 6 March 2018 and the Conciliation Commission concluded its work with the release of its report on 9 May 2018. In this respect the timeline for the conclusion of the Timor Sea Treaty, coming prior to the finalisation of the Commission's report, is at variance with the sequence envisaged under Article 298(1)(a)(ii) which anticipates that the parties would negotiate an agreement based on a conciliation commission report after the release of the report. That Australia and Timor-Leste were able to conclude the treaty prior to the finalisation of the conciliation indicates not only how successful that process was but also how willing Australia was to negotiate the treaty in good faith.

16. Table 1 reflects the Australian position regarding acceptance of ICJ jurisdiction and UNCLOS compulsory dispute settlement regarding maritime boundaries, and also the position of Australia's maritime neighbours with whom Australia has already negotiated maritime boundaries or those with whom it may seek to negotiate maritime boundaries in the future. In this respect, it is notable that only Norway and Timor-Leste have also made equivalent Article 36(2) ICJ Statute and UNCLOS declarations, though the precise content of those declarations differ from those of Australia.

Table 1

Acceptance of ICJ jurisdiction and UNCLOS compulsory dispute settlement by Australia and its neighbours with which it shares maritime boundaries

State	ICJ Article 36(2) declaration	UNCLOS Article 287(1) declaration	UNCLOS Article 298 (1) declaration
Australia	Subject to existence of other means of dispute settlement; maritime boundaries; certain temporal disputes	ITLOS; ICJ	Disputes referred to in Article 298(1)
France	No declaration	No declaration	Disputes referred to in Article 298(1)
Indonesia	No declaration	No declaration	No declaration
New Zealand	Subject to existence of other means of dispute settlement; certain temporal disputes; certain disputes regarding marine living resources up to the 200 nautical mile area	No declaration	No declaration
Norway	All limitation and exceptions relating to settlement of disputes under UNCLOS apply to law of the sea disputes	ICJ	Does not accept an arbitral tribunal constituted in accordance with Annex VII for any of the categories of disputes referred to in Article 298;

Papua New Guinea	No declaration	No declaration	No declaration
Solomon Island	No declaration	No declaration	No declaration
Timor-Leste	Declaration without reservation	ITLOS, ICJ, Annex VII Tribunal, Annex VIII Tribunal	

E. Timor Sea Treaty

17. The Timor Sea Treaty entered into force on 30 August 2019 and for the first time settled a permanent maritime boundary between Australia and Timor-Leste in the Timor Sea.²⁸ Of relevance to this inquiry are the dispute settlement mechanisms found in the treaty. These provisions are unusually detailed, and apply with respect to any dispute arising during the lifetime of the treaty. The dispute settlement mechanisms take two forms.

18. First, Article 12 provides for the settlement of disputes that arise within the first five years of the treaty's operation, where disputes can be settled either by negotiation, the Conciliation Commission members, or by way of Annex E arbitration. If such disputes are not settled by negotiation, then the parties are to refer the dispute for settlement to 'one of more members of the Conciliation Commission.'²⁹ The procedure for settlement by referral to Conciliation Commission members is broadly outlined,³⁰ and could be described as a modified conciliation process based upon Annex V, UNCLOS. Subject to the exemption of certain disputes,³¹ if dispute settlement by way of negotiation fails then after six months one of the parties may refer the dispute to arbitration under Annex E. Dispute settlement by way of arbitration is detailed in Annex E under which a three-member arbitral tribunal would be appointed, of which Australia and Timor-Leste each nominate one member with the third member appointed jointly as President. The proposed arbitration proceedings are not exceptional and are consistent with international practice. The award of the tribunal is to be final and with no appeal.³² Unless otherwise decided, the expenses of the tribunal are to be shared equally between the parties.³³

²⁸ *Treaty between Australia and the Democratic Republic of Timor-Leste Establishing their Maritime Boundaries in the Timor Sea*, done in New York on 6 March 2018 [2019] ATS 16 (2018 Timor Sea Treaty).

²⁹ Article 12(1), 2018 Timor Sea Treaty.

³⁰ Article 12(2), 2018 Timor Sea Treaty.

³¹ Article 12 (4), 2018 Timor Sea Treaty.

³² Annex E, Article 10, 2018 Timor Sea Treaty.

³³ Annex E, Article 6, 2018 Timor Sea Treaty.

19. Second, a distinctive dispute settlement process is established under Annex B relating to the Greater Sunrise Special Regime under which competence is bestowed upon a 'Dispute Resolution Committee'. Disputes arising with respect to certain aspects of the operation and mandate of the Governance Board established under Annex B for the Greater Sunrise Special Regime,³⁴ and the Development Plan for the Greater Sunrise Fields,³⁵ or as referred to the Committee by the Designated Authority and Greater Sunrise Contractor are within the jurisdiction of the Committee. The Committee is to be an independent body consisting of three members, with one appointed by each party and the Chair chosen from a list of approved experts selected and maintained by Australia and Timor-Leste.³⁶ Unless otherwise agreed, the Committee is to reach its decisions within 60 days.³⁷ Of note is that no reference is made to the applicable law the Committee is to refer to in making its decisions, default of appearance if one of the parties fails to appear before or engage with the Commission, and the expenses of the Commission.
20. Importantly, given the comprehensive nature of these dispute settlement procedures under the Timor Sea Treaty, their effect would be to exclude the compulsory Part XV UNCLOS dispute settlement procedures if a dispute was to arise in the future between Australia and Timor-Leste over the interpretation of the Treaty. This arises as a result of the operation of Article 282 of the convention. In that respect, it needs to be recalled that Article 282 provides that if parties to a bilateral law of the sea dispute have agreed upon procedures for the settlement of that dispute, then unless the parties otherwise agree that procedure applies in lieu of those procedures provided for in Part XV.

Conclusions

21. Australia has been a strong supporter of the post-World War II international legal system that has been developed under the framework of the United Nations Charter.³⁸ In particular, Australia has actively engaged in mechanisms for the resolution of international disputes as envisaged under Part VI of the United Nations Charter providing for the pacific settlement of disputes. In that respect, Australia has consistently been a strong supporter of the ICJ and also of other international courts and tribunals such as ITLOS. An illustration of Australia's

³⁴ Annex B, Article 7(7), 8(1)(a), 2018 Timor Sea Treaty.

³⁵ Annex B, Article 8(1)(a), 9(2), 2018 Timor Sea Treaty.

³⁶ Annex B, Article 8(1)(b), 2018 Timor Sea Treaty.

³⁷ Annex B, Article 8(1)(d), 2018 Timor Sea Treaty.

³⁸ See generally the discussion of Australia's engagement with international law in Donald R. Rothwell and Emily Crawford (eds), *International Law in Australia* 3rd (2017).

support for the ICJ and the peaceful settlement of international disputes in particular is reflected in Australia's acceptance of the compulsory jurisdiction of the ICJ under Article 36 (2) of the Statute of the ICJ, Australia's appearance before the court as both an applicant and a respondent and also in advisory proceedings, and Australia's nomination and support for the election of two judges to the ICJ.³⁹ It should especially be noted that consistent with Australia's acceptance of the court's jurisdiction, proceedings have been commenced against Australia by two of the smallest states in the international community: Nauru⁴⁰ and Timor-Leste.⁴¹ These two cases highlight the capacity of the court to provide an avenue for justice by some of the smallest states in the international community. Australia's modification in 2002 of its Article 36(2) ICJ declaration is entirely consistent with its sovereign right to accept the compulsory jurisdiction of the ICJ subject to certain limitations.

22. Australia has been a strong supporter of UNCLOS and was an original party to the Convention upon its entry into force in 1994. Australia's preference for the determination of its maritime boundaries is by negotiation and this is reflected in its Article 298 UNCLOS declaration. This practice pre-dates the negotiation of UNCLOS, and has continued consistently with Articles 15, 74 and 83 UNCLOS since the entry into force of the convention. On the basis of this practice Australia would seek to negotiate its outstanding maritime boundaries in the future when the opportunity arose for the settlement of those boundaries.⁴² Australia has also been a strong supporter of the Part XV dispute settlement procedures and, consistent with an expectation that it do so, has made an election under Article 287 UNCLOS indicating its preference for ITLOS or the ICJ to settle disputes involving Australia. Australia can still remain subject to Annex VII UNCLOS arbitration if another party has not made an Article 287 declaration. As an applicant or respondent, Australia has been engaged in the following matters before ITLOS, Annex VII Arbitration and Annex V Conciliation consistent with UNCLOS:

- i) *Southern Bluefin Tuna* (with New Zealand) (ITLOS:1999; Annex VII Arbitration 2000);⁴³

³⁹ Sir Percy Spender (1958-1967); James Crawford (2015-).

⁴⁰ *Certain Phosphate Lands in Nauru* (Nauru v. Australia) (Preliminary Objections) [1992] ICJ Reports 240.

⁴¹ *Questions relating to the seizure of certain Documents and Data* (Timor Leste v. Australia) (Request for the Indication of Provisional Measures) (Order) [2014] ICJ Reports 147.

⁴² See Stuart Kaye, *Australia's Maritime Boundaries* (2001).

⁴³ *Southern Bluefin Tuna* (New Zealand v Japan; Australia v Japan) (jurisdiction and admissibility) (2000) 119 ILR 508.

- ii) *Volga case* (Russian Federation v Australia) (ITLOS:2002);⁴⁴
- iii) *Timor Sea* (Timor-Leste v Australia) (Annex V Conciliation: 2016-2018).

Australia is the only party to UNCLOS that has utilised these three means of dispute settlement for its law of the sea disputes, and along with Timor-Leste is the only party to have utilised Annex V compulsory conciliation with respect to a maritime boundary.

23. Australia's Article 36(2) ICJ declaration, and its declarations under Articles 287 and 298 UNCLOS are consistent with international law and Australia's entitlements as a sovereign state to be subject to various forms of compulsory dispute settlement. There is no evidence that other States have been completely barred from commencing international legal proceedings against Australia in the ICJ as is evidenced by Timor-Leste commencing proceedings against Australia in the 2014 *Documents and Data* case. Likewise, notwithstanding Australia's Article 36(2) ICJ declaration and Article 298 UNCLOS declaration, Timor-Leste was able to commence compulsory conciliation proceedings against Australia in reliance upon Article 298(1)(a) which facilitated the negotiation of the 2018 Timor Sea Treaty.
24. The principal means for settlement of outstanding maritime boundaries between Australia and its neighbours is negotiation in order to reach an agreement consistent with Articles 15, 74 and 83 UNCLOS. There also remain a number of dispute settlement options for Australia and its maritime neighbours to settle maritime boundaries through third party dispute settlement. These options include:
- i) Adjudication before the ICJ by way of mutual ad hoc consent under Article 36(1) Statute of the ICJ;
 - ii) Compulsory conciliation under Article 298(1)(a) UNCLOS;
 - iii) Ad hoc conciliation under Article 284 UNCLOS;
 - iv) All the peaceful third party ad hoc means of dispute settlement outlined in Article 33 United Nations Charter and supported by Article 279 UNCLOS, including arbitration;
 - v) Ad hoc arbitration, including referral of a dispute to the Permanent Court of Arbitration; and,
 - vi) Specific dispute settlement measures agreed between Australia and its neighbours under existing maritime boundary treaties, including the 2018 Timor Sea Treaty.

⁴⁴ *Volga* (Russian Federation v Australia) (prompt release) (2003) 42 ILM 159.

Accordingly there remain multiple options for Australia to seek to resolve its remaining maritime boundaries with France, New Zealand, and Norway in Antarctica, if Australia were to ever seek to do so mindful of the potential constraints imposed by the Antarctic Treaty, and if adjustments and modifications were required to be made to the existing maritime boundaries with France, Indonesia, New Zealand, Papua New Guinea, Solomon Islands, and Timor-Leste.

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