

## Political Reviews

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*The Region in Review: International Issues and Events, 2017*

NIC MACLELLAN

*Melanesia in Review: Issues and Events, 2017*

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*The Contemporary Pacific, Volume 30, Number 2, 461–547*  
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## TIMOR-LESTE

The year 2017 in Timor-Leste was dominated by a round of national elections and a major breakthrough in the country’s long-running dispute

with Australia over maritime boundaries. In the latter part of the year, a newly installed FRETILIN-led minority government proved unable to pass its program in Parliament, which saw the country head back to the polls in May 2018. (FRETILIN is the acronym for one of Timor-Leste's major political parties: the Revolutionary Front for an Independent East Timor.) A new maritime boundary and revenue-sharing treaty with Australia negotiated over 2017 was signed in early March 2018.

The year started unexpectedly with a joint announcement that the government of Timor-Leste would terminate the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) with Australia (Australian Treaty Series 2007). The decision, which Australia did not contest, opened the way for progress in boundary negotiations. Aside from sharing the proceeds of undersea resources, the key feature of CMATS was a fifty-year moratorium on boundary negotiations in favor of a series of revenue-sharing agreements, known as "provisional arrangements" under the UN Convention on the Law of the Sea, or UNCLOS.

Having vigorously defended CMATS as recently as 2016, several factors explain the change in Australia's position. The 2006 treaty had been tarnished by allegations that Australia had spied on the East Timorese negotiating team in 2004 (*SMH* 2013). Timor-Leste had then challenged the treaty, invoking the Vienna Convention's principle that negotiations should take place in "good faith." Equally significantly, in April 2016 the government of Timor-Leste initiated compulsory conciliation proceedings under

UNCLOS with the aim of concluding permanent maritime boundaries with Australia. Australia's opening legal gambit—a jurisdictional claim that the CMATS treaty had already settled the border dispute—was dismissed by the conciliation commission in September 2016, which found that Australia's obligation to settle the boundary survived the treaty and its purported moratorium (UNCLOS Conciliation Commission 2016). Having lost this argument, Australia had little further practical use for CMATS. An additional factor was the dispute between China and its neighbors in the South China Sea, which raised the regional profile of international law in boundary disputes. In that case, Australia urged China to follow the rule of law, as represented by the decision of the tribunal formed under UNCLOS. The contrast with Canberra's own behavior—its refusal to discuss a boundary in the Timor Sea and its withdrawal from the dispute-settlement provisions of UNCLOS shortly before East Timorese independence in 2002—had created a public relations problem for Australia. For example, the powerful US House Armed Services Committee's National Defense Authorization Act for 2018 was specifically amended to encourage resolution of the maritime-boundary dispute between Australia and Timor-Leste. The committee noted that negotiations would send "a positive signal to other states in the region regarding adherence to a rules-based international order," highlighting the "potential security benefits" likely to flow from a peaceful resolution of the dispute (US House Armed Services Committee 2017, 2). There is little question that this shift in Washington

signaled extra pressure on Canberra to resolve the matter within the UNCLOS conciliation process. These negotiations reached a partial conclusion in September 2017, discussed later in this review.

The 2017 round of elections occurred in the wake of a government formed in extraordinary circumstances in early 2015, when the former independence movement leader Xanana Gusmão handed over the prime ministership to an opposition FRETILIN figure, Rui Araújo. Though best seen as a power-sharing executive rather than a formal government of national unity, this informal “grand coalition” between Timor-Leste’s two largest parties—the National Congress for Timorese Reconstruction (CNRT) and FRETILIN—was a remarkable development, given the bitter tensions between the parties as recently as 2012. Described by a senior CNRT minister as a transition from “belligerent democracy to consensus democracy” (Pereira 2014), this powerful combination left President José Maria Vasconcelos (better known by his *nom de guerre*, Taur Matan Ruak) as the closest thing to an effective opposition. Ruak did not shrink from this role, attacking the government over accountability issues in early 2016 (Allard 2016) and vetoing the initial version of its budget. His new party, the *Partidu Libertasaun Popular* (Popular Liberation Party, or PLP), entered the fray in 2017.

The presidential campaign culminated in a national vote on 20 March. Despite the nomination of eight candidates, FRETILIN’s candidate, Francisco “Lú Olo” Guterres (a former guerrilla commander and twenty-four-year veteran of the Falintil

military resistance), received a massive boost in January 2017 with a previously unthinkable endorsement by Xanana Gusmão. While expressed as a personal opinion rather than a formal CNRT position, Gusmão’s authority was such that the party did not formally support another candidate. This led many observers to conclude that the era of national unity would likely continue. Lú Olo was running for the third time after twice being runner-up (to José Ramos-Horta in 2007 and Ruak in 2012).

The March 2017 presidential election duly delivered a decisive victory for Guterres, receiving just over 57 percent of the national vote, ahead of the Democratic Party’s António da Conceição (who was also endorsed by Ruak’s PLP) with 32.5 percent. The clear majority in the first round meant a run-off election was not required for the first time since 2002. While the president has an important role in the formation of a government and holds a partial veto over legislation, executive power lies overwhelmingly with the prime minister and cabinet in Timor-Leste’s semi-presidential system, making the July parliamentary elections the more important of the two votes.

Twenty-one parties contested sixty-five seats in national parliamentary elections on 22 July. In a population with a median age of just under nineteen years and a voting age of seventeen, this election represented an important transitional moment for Timor-Leste, with a full one-fifth of Timor-Leste’s 750,000 registered voters participating for the first time.

Under Timor-Leste’s closed-list proportional system, voters select a party

rather than individual candidates. Each party registers a list of sixty-five candidates in order of election, giving party leaders substantial power over candidates anxious to appear high on the list. The system also allows for progressive features, such as the requirement that every third candidate be a woman, which has given Timor-Leste one of the highest percentages of female members in Parliament in Asia, at 38 percent.

In 2017, parties needed at least 4 percent of the vote to receive seats, up from 3 percent in 2012. While this hurdle modifies the strict proportionality of the system, the large number of parties participating in the election attests to the relative ease of party registration and political participation. This reflects Timor-Leste's relatively open society and pluralist culture, which saw it ranked as the most democratic country in Southeast Asia in the *Economist's* 2016 Democracy Index (*The Economist* 2017) and saw the 2018 Freedom House "Freedom in the World" index increase Timor-Leste's ranking from "partly free" to "free" (Freedom House 2018).

Seeking to challenge the major parties, the immediate past President Taur Matan Ruak and his new PLP campaigned strongly against the "megaproject"-led development policies favored by the previous government, arguing instead for increased spending on basic development indicators like education, health, and agriculture. The PLP vocally opposed the unpopular life pensions for politicians and also raised allegations of patrimonialism and the growth of "money

politics" in awarding government contracts.

In many ways this set the party against the CNRT, which continued to campaign on rapid modernization through government-led infrastructure spending, embodied in Gusmão's own strategic national development plan (Government of Timor-Leste 2011). For its part, FRETILIN's parliamentary campaign slogan "For a more developed Timor-Leste" promised improved outcomes in education and health, using images of East Timorese making "plus" signs with crossed fingers.

Despite the absence of its most senior Falintil military veteran, Lú Olo, this focus on development policies paid dividends and saw FRETILIN maintain its 2012 vote share in a more competitive field. In the 22 July election, FRETILIN emerged narrowly ahead of CNRT with 29.7 percent and 29.5 percent respectively, resulting in a slim but important lead of 23 FRETILIN seats to CNRT's 22. For its part, the CNRT vote dropped from 37 percent in 2012, affected by the rise of the PLP, which performed very creditably in its first outing with 10.6 percent of the national vote. This outcome marked the PLP as the new third force in Timor-Leste's politics and translated into 8 seats. The Democratic Party vote remained strong, with a share of 9.8 percent and 7 seats, despite the death of their founder Fernando "Lasama" de Araújo in 2015. Of particular interest was the rise of Kmanek Haburas Unidade Nacional Timor Oan (KHUNTO), with 6.4 percent of the vote. This party pitched its campaign at Timor-Leste's unemployed and disaffected youth and performed especially well in the rural areas,

doubling its 2012 vote to receive 5 seats (Aspinall and Scambary 2017). The rise of both the PLP and KHUNTO suggested shifting voter alignments as Timor-Leste's demographic "youth bulge" enters political life.

Having lost eight seats since 2012, Xanana Gusmão was openly disappointed with the result and dramatically announced his resignation as president of CNRT, declaring that the party would go into opposition. This announcement challenged a widespread assumption that the power-sharing arrangement between the two major parties would continue. The CNRT congress soon suspended Gusmão's resignation, meaning that he remained party leader. Significantly, however, Gusmão ruled out leading an alliance of smaller parties, saying the CNRT "will not accept proposals from anyone, nor invite any party to form a coalition because it does not intend to participate in government" (Murdoch 2017).

In combination with a FRETILIN president, FRETILIN's narrow seat advantage gave the party an edge in the formation of a government. As no party had a majority of 33 seats, FRETILIN attempted to form a coalition with the PLP. Negotiations faltered on the choice of president of the national Parliament, a position approximating the speaker. The PLP was also concerned by FRETILIN's determination to include representatives from other parties in the government before a parliamentary majority alliance had been consolidated.

Surprisingly, a new majority coalition then emerged with the Democratic Party—with whom FRETILIN has a fractious history—and KHUNTO,

only for the latter to exit at the last minute before a coalition-signing ceremony. This short-lived coalition nonetheless survived long enough to see FRETILIN's Aniceto Guterres Lopes elected as president of the Parliament.

Ultimately, FRETILIN could only form a thirty-seat minority coalition with the Democratic Party. On 15 September, with no alternative majority coalition being proposed, President Guterres appointed the first minority government in Timor-Leste's short constitutional history, with FRETILIN leader Mari Alkatiri as the new prime minister of Timor-Leste. The executive was bolstered by some well-regarded independents, including José Ramos-Horta, and a scattering of ministers affiliated with other parties. Several PLP members joined the new government in ministerial roles, only to have their party membership suspended.

No opposition majority alliance was proposed at this point. However, events moved rapidly and quickly showed that the CNRT, the PLP, and KHUNTO were able to work together, sidelining most FRETILIN nominees in the formation of various parliamentary committees. Subsequently, on 12 October, these three parties formed the Parliamentary Majority Alliance (AMP), controlling thirty-five seats. A political standoff emerged on 19 October when the AMP parties rejected the government's program. To some extent, the standoff was a clash of emerging conventions in Timor-Leste's democracy. Similar political systems tend to have a default presumption that the most-voted party will lead a coalition government. In Portugal, for example, that convention stayed in place for thirty-nine years after the

restoration of democracy in 1976. While this view was central to the government's case, and minority governments are perfectly constitutional, majority support in Parliament is still required to pass the program. Indeed, Portugal's thirty-nine-year run ended in 2015 in similar circumstances. Importantly, Timor-Leste is of course entitled to develop its own political conventions, and these are still emerging, within the bounds of the constitution, through presidential practice. In one view, the convention might best be seen as first right to attempt to form a government, which FRETILIN was given. It is also notable that a CNRT-led coalition had been installed in 2007 led by the second-largest party, suggesting a new path for the convention in Timor-Leste.

While the AMP did not question the constitutionality of the president's actions, it did refer to them as "imprudent," pointing to the political unsustainability of the minority government and offering the AMP as an alternative if the government fell (Leach 2018). It was then widely assumed that the government had thirty days to resubmit the program and would fall if rejected a second time. However, the standoff revealed some grey constitutional areas, with a resubmission time limit unspecified in the constitution, though some commentators argued that the thirty-day limit for the first presentation was implied for the second (Feijó 2017). With the major parties at loggerheads, civil society was concerned that conflicting constitutional interpretations would revive memories of the 2006 crisis and called for the parties to work together to establish a consen-

sus for political stability (Fundasaun Mahein 2017).

In December, the FRETILIN-led minority government failed to pass a budget rectification measure needed to fund new ministries and programs, and the state operated instead on a "duodecimal" system based on monthly allocation of the previous year's budget. This period also saw the FRETILIN parliamentary president repeatedly delay opposition motions of no confidence and refer a motion for his own removal to the courts. Parliament also failed to hold certain plenary sessions in December, in breach of its own regulations. These tactics by the FRETILIN president of Parliament seemed designed to delay the second rejection of the government program until a time closer to 22 January, the earliest day the president could dissolve Parliament and call early elections.

Gusmão's lengthy absence throughout this period (jokingly referred to by FRETILIN as a *peregrinação*, or pilgrimage) was largely necessitated by the intense maritime boundary negotiations with Australia and commercial joint-venture partners. His controversial decision not to return during various breaks in the talks was portrayed by supporters as "leaving it to a younger generation" but in practice tended to highlight how central he remained to any political resolution. Inflammatory rhetoric also increased, with Prime Minister Mari Alkatiri claiming that the rejection of the government program represented an attempted *golpe*, or coup. The opposition boycotted sittings of the parliamentary committee on budget and finances, effectively preventing



its operation, and called for the prime minister to step down. These developments further highlight the apparent return of “belligerent democracy” after the informal power-sharing government of CNRT and FRETILIN from 2015 to 2017.

With these parliamentary maneuvers nearing their end, President “Lú Olo” Guterres was critical to a resolution. With precedent from similar semi-presidential regimes in the Lusophone (Portuguese-speaking) world suggesting a wide constitutional discretion, Guterres had the primary options of dissolving Parliament and seeking fresh elections (the path favored by FRETILIN) or seeking a solution within the current Parliament and installing an AMP coalition government. On 25 January 2018, President Guterres announced a new election would take place, with a date of 12 May confirmed a week later. In the meantime, the FRETILIN–Democratic Party executive would act as a caretaker government.

The AMP parties subsequently established a formal preelection coalition for the forthcoming elections, which would clearly make it a formidable force, greatly increasing its chances of finishing first. Another important development is the recent emergence of the Democratic Development Front, or FDD—a group of smaller parties unable to clear the 4 percent hurdle in 2017—with the stated aim of supporting the AMP. Balancing this, Catholic Church commentary on the minority government was relatively positive, a major shift from the 2005–2007 era.

Despite the political ructions, East Timorese society remained largely

calm. Leaving aside the return of a more belligerent form of democracy, and accusations of an institutional “coup,” the political standoff demonstrated that the checks and balances in the constitutional system were operating, with strong executive accountability to Parliament, previously lacking under the power-sharing government.

Following twelve months of negotiations that saw “confidence-building measures” enacted—including the termination of CMATS and Timor-Leste’s cessation of a separate legal action relating to espionage (Everingham 2017)—Timor-Leste and Australia made a major joint announcement on 1 September (Permanent Court of Arbitration 2017), declaring they had reached an agreement on “central aspects” of a maritime-boundary determination.

While full details remained confidential until 6 March 2018, the agreement created permanent maritime boundaries and revised resource-sharing arrangements in the yet-to-be-developed Greater Sunrise oil and gas field. This was a major step forward for the resolution of the long-running dispute between the two neighbors. Specifically, Timor-Leste secured a median-line boundary in the Timor Gap, creating a permanent maritime boundary for the first time. The median-line boundary places 100 percent of the Joint Petroleum Development Area (JDPA) in Timor-Leste’s sovereign waters, where prior treaties divided the revenue from existing fields, such as Bayu-Undan, 90 to 10 in its favor. However, as these fields are nearing the end of their life, far more financially significant is the renegotiated revenue split over



as-yet-untapped Greater Sunrise field, worth in excess of US\$40 billion, including total potential revenues to the two governments in the order of US\$12–15 billion. While Timor-Leste had a respectable legal opinion suggesting that the entire Greater Sunrise field could be within its maritime waters under UNCLOS, this claim was always a more complicated proposition, as the field straddles the eastern lateral (or side) boundary of the JDPa. Unlike the relatively straightforward median-line principles governing the east-west boundary, the north-south laterals involve complex technical considerations, with competing options for baselines and offsets. As the now defunct CMATS treaty had given Timor-Leste a 50 percent share, renegotiation was a high-stakes gamble, with the young state's guaranteed share of Greater Sunrise revenues reverting to 20 percent under an earlier treaty, pending the outcome of the UNCLOS conciliation.

By March 2018, it was clear that the gamble had paid off. The renegotiated agreement saw a substantial increase in Timor-Leste's share of the future Greater Sunrise revenues to 70 or 80 percent, pending resolution of the final contested issue of where the pipeline for downstream processing will land—in Australia or Timor-Leste (The Conversation 2018). The higher revenue figure would operate in the event that Timor-Leste does not achieve its goal of sending the pipeline to the southern coast of Timor. While Timor-Leste may not have achieved its entire suite of goals, the creation of a maritime boundary with Australia for the first time and

a major increase in future revenues would be seen as a substantial victory in Dili and an endorsement of the legal strategy of prosecuting the dispute through the UNCLOS compulsory conciliation process.

MICHAEL LEACH

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