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Australian hypocrisy on full view in UNCLOS case

By Callum Smith

Commenting on a certain international maritime dispute, Australian Prime Minister Malcolm Turnbull said, "this is an important decision, it is one that has been made in accordance with international law and it should be respected by both parties, and indeed by all parties and all claimants." It's a shame his foreign minister doesn't seem to agree.

Following the announcement of The Hague ruling on the South China Sea dispute between China and the Philippines, Australia was all too quick to condemn what it regarded as regional "bullying" in violation of the United Nations Convention on the Law of the Sea (UNCLOS), and urged China not to pursue bilateral treaty agreements in lieu of a multilateral resolution.

Australian Foreign Minister Julie Bishop also reaffirmed Australia's commitment to exercising its rights to freedom of navigation. In her own words, to ignore the ruling would be a "serious international transgression," and that Australia would stand with the international community in calling for both sides to treat the arbitration as final and binding.

That opinion might have been taken more seriously if Australia followed up on its hollow commendation for multilateralism and international law with adherence to those ideals itself.

Australia has had its eye on Timorese oil for a while. Having endorsed the 1975-99 Indonesian occupation of East Timor during which up to 180,000 soldiers and citizens were killed, Australia was complicit in atrocities, and the only Western nation to recognize Indonesia's annexation of Timor-Leste – a means to an end, ensuring the ratification of the 1989 Timor Gap Treaty.

This treaty, famously celebrated with an in-flight champagne toast between then Australian foreign minister Gareth Evans and Ali Alatas, the Indonesian foreign minister and representative of "friend of the West" president Suharto, opened the Timor Gap to Australian and Indonesian exploitation. This left Timor-Leste without a permanent maritime border.

Most recently, the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS), which Australia argues is the legal basis for its claims, was signed in 2006. This treaty is virtually equivalent to the 1989 treaty, except that the ratio of revenue distribution in the Joint Petroleum Development Area was changed in favor of East Timor to 90:10. On these grounds, Australia argues that its bilateral treaty with Timor-Leste is "fair."

This ratio is, however, based on a disputed definition of Australian borders which places the bulk of the Greater Sunrise gas field – 450 kilometers north-west of Darwin, or 150 kilometers south-east of Timor-Leste – in Australian territory. Amid tensions over the distribution of revenue, it was revealed that Australia had spied on treaty negotiations in 2004 under the guise of an aid program. It is yet to be tested whether this espionage is legally equivalent to fraud, a ruling which would invalidate the treaty.

The father of East Timorese independence, Xanana Gusmão, urged his Australian counterparts to "sit down as friends and negotiate," while the Australian government has explicitly rejected any ruling that may result from the arbitration that Timor-Leste has called for on the grounds of Australian fraud, and refused to participate in any such negotiations.

Australia argues that the commission does not have jurisdiction to conduct hearings on maritime boundaries. And, technically, it doesn't.

Australia lodged a declaration in 2002, just months before Timor-Leste declared its independence, stating that it does not accept the procedures provided in UNCLOS for resolution of maritime disputes. In other words, Australia does not recognize the legitimacy of any Hague ruling, nor is there any mechanism for implementation of any recommendations that may arise as a result of the arbitration.

Sound familiar? Like the South China Sea arbitration, there is an existing agreement that a single party retrospectively disputes. In 2006, China made a similar statement excluding itself from dispute settlement procedures, pursuant to Article 298 of UNCLOS.

Concurrent to its condemnation of China's preference for bilateral negotiations with the Philippines, and its criticism of Japan for withdrawing from UNCLOS in order to allegedly pursue whale slaughter, Australia exempts itself from the very conventions it cites in denouncing other nations' supposed violations of "international law."

Unfortunately, Australia's regional bullying and the embarrassing revelation of covert spy operations overshadow its otherwise admirable aid efforts in Timor-Leste.

What's more perplexing is Australia's brazen hypocrisy, reflected in its blatant double standards on international law. Bishop previously cautioned China on the "reputational cost" of ignoring the Hague ruling, a ruling that Australia does not recognize itself. Perhaps Australia should heed its own advice before calling the kettle black.

The author is a Shanghai-based Australian scholar and commentator. opinion@globaltimes.com.cn

Canberra should ditch double standards over maritime law

By Su Hao and Wang Zheng

The South China Sea disputes should be resolved between China and other claimants, but countries from outside have intervened, making the regional situation more sophisticated and strained. Around the announcement of arbitration tribunal over the South China Sea, Australia, as a country outside the region, called on China and the Philippines to abide by the award "which is final and binding on both parties," and claimed that it will continue to exercise the freedom of navigation under the international law. Canberra later released a joint statement with Washington and Tokyo, urging Beijing to respect the award. Australia attempts to perform "decently" by firmly supporting the international tribunal's ruling however absurd it is. But apparently, Canberra has adopted double standards.

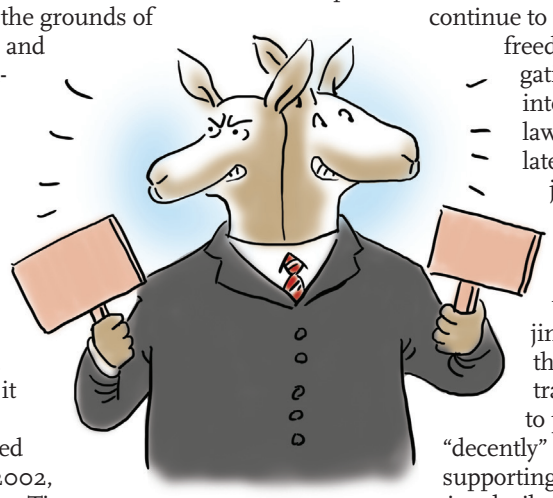

Illustration: Liu Rui/GT

The Australia-East Timor disputes over maritime boundaries in the Timor Sea have been simmering for a long time, and the case is being heard at the Permanent Court of Arbitration (PCA) in The Hague at present.

But in the meantime, Australia's Foreign Minister Julie Bishop and the Attorney General George Brandis issued a joint statement: "In line with our pre-existing, legally binding treaties, which are in full accordance with international law, we will argue that the commission does not have jurisdiction to conduct hearings on maritime boundaries." This means Australia will not accept the tribunal's award on the disputes.

The border disputes between Australia and East Timor date back to the colonial age. East Timor was once colonized by Portugal and then controlled by Indonesia, but local people insisted on building an independent and sovereign state. The Democratic Republic of Timor-Leste was officially founded on May 20, 2002 and was the first new-born nation of the 21st century. Although East Timor shared the Timor Sea with Australia, the maritime boundaries have not been settled between the two states. A number of agreements were reached between Australia and Indonesia over maritime boundaries in the Timor Sea in the 20th century, but they have not been recognized by the East Timorese government and people.

The Timor Sea Arrangement was signed between Australia and the United Nations Transitional Administration in East Timor (UNTAET) in July, 2001. The Timor Sea Treaty between Australia and East Timor took effect in April, 2003, and two sides reached consensus on the exploitation of resources. Australia and East Timor clinched the Treaty on Certain Maritime Arrangements in the Timor Sea in January, 2006. They agreed to shelve the border disputes for 50 years and make a 50-50 split on the profits in the disputed Greater Sunrise.

However, according to the United Nations Convention on the Law of the Sea (UNCLOS), most oil and gas resources in the Timor Sea fall within East Timor's territory, and thus the East Timorese government attempts to settle border disputes with Australia via negotiation or law, which was later turned down by the Australian side. Canberra's spying scandal in 2012 has intensified the maritime disputes. East Timor protested in March to demand negotiations with Australia, but the latter has not agreed to settle the disputes via bilateral talks. Australia refused to accept the PCA arbitration case initiated by East Timor in April.

The Australian foreign minister has shifted her attitude to the South China Sea arbitration within less than two months. It is ironic that Australia refuses to accept the Timor Sea arbitration but meanwhile urges China to abide by the South China Sea award.

Bishop claimed earlier that China should respect the South China Sea award that is "final and binding." Australian Defense Minister Marise Payne reached a consensus with his Japanese counterpart Tomomi Inada in August that China should abide by the South China Sea award. It puzzles the international community that the Australian government has adopted a totally different attitude on the Timor Sea arbitration, which was heard through the same system as in the South China Sea case.

Having denied the jurisdiction of the arbitral tribunal over maritime demarcation on its own account, Australia should not force other countries to accept the tribunal's award. Australia will lose its credibility over its "double standards." It should not involve itself in the South China Sea arbitration while challenged by the maritime boundary disputes itself.

It is power politics when Australia, with its own disputes unsettled, deploys military force to safeguard the so-called maritime orders in the waters of other countries. The Australian government should not do what it would not like the international community to do to itself.

Su Hao is director of the Center for Strategic and Conflict Management at China Foreign Affairs University. Wang Zheng is a PhD candidate at China Foreign Affairs University. opinion@globaltimes.com.cn

Page Editor: liuzhun@globaltimes.com.cn