

Drawing the Line

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Transcript

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Monday 17th March 2014

Late last year the office of Canberra lawyer Bernard Collaery was raided by agents from ASIO and the Federal Police.

They were looking for documents that linked his client, a former top Australian spy, to disclosures that Australia had bugged East Timor's Prime Minister and his advisors during crucial treaty talks a decade ago. Those talks resulted in a treaty that carved up billions of dollars worth of oil and gas reserves in the Timor Sea.

Now both the lawyer and former spy are threatened with criminal charges for breaching national security laws.

Next on *Four Corners*, reporter Marian Wilkinson investigates the events leading up to the ASIO raids on Bernard Collaery and the former spy and reveals the growing friction between Dili and Canberra over the row.

Attorney-General George Brandis defends the head of ASIO, David Irvine, for his advice on the warrants and tells *Four Corners*: "*the intelligence case that ASIO put before me was a very strong case.*"

But East Timor's lawyer, Bernard Collaery, says he is concerned the Government is trying to stop the former spy, codenamed 'Witness K', giving evidence about the espionage operation in legal proceedings launched by East Timor.

East Timor's advisors are now arguing Australia spied for commercial reasons. Former treaty negotiator Peter Galbraith tells *Four Corners*: "*the Australian Government was shockingly close to the oil companies.*"

The stakes are high. East Timor wants to invalidate the treaty it signed with Australia in 2006 and has taken its case to the Permanent Court of Arbitration in The Hague.

The tiny nation is calling on Australia to finally negotiate permanent and fair maritime boundaries that will give it more control over the oil and gas wealth in the Timor Sea.

'Drawing the Line' is a revealing insight into national security in the post-Cold War environment. Do governments too freely use espionage for economic advantage? And is it in the national interest?

'Drawing the Line', reported by Marian Wilkinson and presented by Kerry O'Brien, goes to air on Monday 17th March at 8.30pm on ABC1. It is replayed on Tuesday 18th March at 11.00am and 11.35pm. It can also be seen on [ABC News 24](#) on Saturday at 8.00pm, [ABC iview](#) and at abc.net.au/4corners.

Transcript

DRAWING THE LINE - Monday 17 March 2014

KERRY O'BRIEN: Another spy saga involving another near neighbour, welcome to *Four Corners*.

Australia and East Timor have a chequered history, many Australian soldiers who fought the Japanese soldiers there in World War Two say they owe their lives to the Timorese. But then Australia essentially ran dead when Indonesia invaded the small island nation just north of Darwin, only to put its Indonesian relationship when it strongly backed East Timor after it voted for independence in 1999.

So would Australia then choose to bug the offices of East Timor's Prime Minister and his team as has been alleged? When the two friendly countries were sitting down to negotiate a new deal over the immensely rich Timor sea oil and gas deposits, the poverty stricken island nation is desperate for what it says is a fairer share of the commercial spoils. And after learning of the espionage and Australia refused to come back to the table, East Timor sought international arbitration at The Hague on the grounds that Australia had not negotiated that deal in good faith by spying on East Timor's negotiators. Then, last December, ASIO agents and Australian Federal Police raided the home of a former Australian intelligence agent, whose evidence is central to East Timor's case and a Canberra lawyer acting for both.

This story from Marian Wilkinson.

MARIAN WILKINSON, REPORTER: It's a chilly winter morning in London.

But Bernard Collaery isn't troubled by the cold. He's worried about being under surveillance.

Collaery is not a terrorist. He's an Australian lawyer, one of his clients is a former veteran Australian spy.

BERNARD COLLAERY: I had someone come to me with a work place grievance. That person came to me with full authority.

MARIAN WILKINSON: What the former spy told Collaery has huge legal ramifications.

BERNARD COLLAERY: What I heard was just simply shocking and I was most concerned about it and of course it took a long time before the issue matured into the decisions that now have the ramifications that you speak of.

MARIAN WILKINSON: Collaery and his client are now threatened with criminal charges for breaching Australia's national security laws.

MARIAN WILKINSON: So you don't fear being charged?

BERNARD COLLAERY: I don't like being threatened and I'm from Wollongong and I don't intimidate easily.

(Reconstruction of officers conducting a raid)

MARIAN WILKINSON: Collaery is lucky he's bold. Because late last year, ASIO officers and federal police descended on his home office in Canberra - startling his legal assistant who was there alone.

CHLOE PRESTON, LEGAL ASSISTANT, COLLAERY LAWYERS: They told me as soon as I opened the door that they had a warrant. There were parts that were blacked out on it, which I couldn't read. And I was denied a copy due to national security reasons.

MARIAN WILKINSON: What was the clearest statement they made to you as to why they were doing this raid ah on your employer?

CHLOE PRESTON: The only, the only statement that I got was national security. I was given no further information.

MARIAN WILKINSON: Chloe Preston watched as the ASIO officers systematically searched every room, taking confidential legal files.

CHLOE PRESTON: They were placed into a plastic bag and then placed into an envelope, they were sealed with an AFP sticker.

MARIAN WILKINSON: The raid dragged on for six hours before Preston could contact Collaery.

As ASIO no doubt knew, Collaery was in The Hague acting for his other client, East Timor. He was preparing for the first stage of legal proceedings.

BERNARD COLLAERY: I was in my hotel room at The Hague when I received a telephone call, this was an extraordinary event. I mean they went straight to my East Timor binders and and spent hours going through ring binder after ring binder.

MARIAN WILKINSON: The ASIO officers took one document in particular - a draft statement from the former Australian spy. Codenamed Witness K, he was set to be a witness in the East Timor proceedings in The Hague.

Did they manage to get the statement of Witness K?

BERNARD COLLAERY: Yes. They managed to get a statement that may have formed, been a draft, but they certainly have been informed from the word go that there are no names mentioned in it that relate to serving ASIO or ASIS personnel and certainly nothing of any technique that's not in a John le Carre novel. I mean, the Australian Government has known that there is no risk to national security.

MARIAN WILKINSON: Witness K is a former senior officer with Australia's Secret Intelligence Service, ASIS. We can't tell you who he is, or indeed where he lives without risking prosecution.

But what we can tell you is that both Witness K and his lawyer, Bernard Collaery, face the real possibility of criminal charges.

What suspected breach of national security laws did you think had occurred?

GEORGE BRANDIS, ATTORNEY-GENERAL: Well, I'm of course not at liberty to go into the details of the particular case, but might I just make the point that this was, the intelligence case that ASIO put before me was a very strong case.

MARIAN WILKINSON: Federal Attorney-General George Brandis authorised the ASIO raids.

GEORGE BRANDIS: It was a clear case that the national security interest, which ASIO is responsible for safeguarding, was served by me authorising the execution of this search.

MARIAN WILKINSON: The legal proceeding with the Permanent Court of Arbitration in The Hague triggered the intense security response over Witness K.

(Bernard Collaery arriving at The Hague)

REPORTER: What are you expecting today?

BERNARD COLLAERY: More justice.

MARIAN WILKINSON: Last year, East Timor's lawyers, including Collaery, approached the Court saying an eight year old maritime treaty with Australia should be torn up. The reason - Australia had spied on East Timor's negotiators at the time the deal was done.

At stake is billions of dollars worth of oil and gas deposits in the Timor Sea.

BERNARD COLLAERY: Why undertake the getting of a treaty in such unfair terms that when one party walks away from the card table, it knows it's done a bad deal, it doesn't know it's been cheated, but when it finds out it's been cheated it, it knows full well what happened.

MARIAN WILKINSON: Witness K knew firsthand about the spying operation on East Timor's treaty negotiations.

ASIO believes if this evidence was passed to the Timorese, Witness K and Collaery could have breached Australia's national security.

(Collaery and Wilkinson walking London streets)

So have there been breaches of the national security laws?

BERNARD COLLAERY: Not in the least. I mean since when has cheating been a State secret? There've been no revelations that could in any way reveal the identity of any serving ASIS Officials. There's been no...

MARIAN WILKINSON: You're clear about that?

BERNARD COLLAERY: Oh absolutely, absolutely. The Australian Government's put no evidence forward to suggest it has...

MARIAN WILKINSON: The Abbott Government is now trying to legally block Witness K's evidence being admissible in the dispute.

[Talking to Collaery] How crucial is he to East Timor's case?

BERNARD COLLAERY: Very important.

We're investigating further as to whether the raid on my house and these other issues are obstructing the course of justice. I won't put it any higher than that, but I think it's important that I make clear that that at the end of the day, we will see whether the raid on my office and the potential intimidation of our witness is itself a part of a pattern of conduct that we need to have examined properly by a proper judicial process.

MARIAN WILKINSON: ASIO raided Witness K's home the same morning as Collaery's. Witness K's passport was seized which would prevent him travelling to The Hague to give evidence.

In East Timor, even the Prime Minister's wife, was stunned.

KIRSTY SWORD GUSMAO: I felt that the raids were not only an act of aggression and hostility towards Timor-Leste's legal representative, but given that the documents are the possession of the Timor-Leste Government, it was also quite a direct act of hostility towards Timor-Leste itself.

ALFREDO PIRES, MINISTER, PETROLEUM AND MINERAL RESOURCES, TIMOR-LESTE: I was quite shocked. But it gives a sign of the new government. We're upset that a raid did take place and documents were seized.

MARIAN WILKINSON: East Timor took Australia to the International Court of Justice, the ICJ, over the ASIO raids in January.

(International Court of Justice)

JUDGE: Good morning, please be seated.

MARIAN WILKINSON: They wanted their legal files seized by ASIO, returned. And they accused Australia of threatening to silence Witness K.

SIR ELI LAUTERPACHT: It hardly needs saying that these are matter of the highest importance to Timor-Leste.

JUDGE: Mr Gleeson is going to open the argument for Australia, you have the floor sir.

MARIAN WILKINSON: But Australia's top legal advisor, Solicitor General Justin Gleeson, used the Court to launch an attack on Collaery and Witness K.

JUSTIN GLEESON: The first proposition is that Mr Collaery, as agent for Timor-Leste, has received into his possession a witness statement and an affidavit from a former ASIS officer.

MARIAN WILKINSON: Gleeson argued the two may have committed a crime in Australia.

JUSTIN GLEESON: It is a crime if a present or former officer of ASIS communicates information concerning the performance of the functions of ASIS acquired as an officer.

MARIAN WILKINSON: He also argued the identity of ASIS officers could be at risk.

JUSTIN GLEESON: The second key provision makes it a separate crime to make public the identity of officers of ASIS, or information from which identity can be inferred...

MARIAN WILKINSON: Gleeson's argument came on instructions from Brandis.

GEORGE BRANDIS: All propositions or arguments advanced by Australia in the ICJ proceedings were advanced by the Solicitor General on the instructions of the Australian Government and those instructions came immediately through me.

MARIAN WILKINSON: Therefore that seemed to imply strongly that that operation did take place in East Timor.

GEORGE BRANDIS: Well, look those are inferences that, that you can draw. I'm not a commentator on these proceedings and I don't propose to be a commentator on these proceedings but in answer to the direct question you've asked me, the Minister in the Government who instructed the Solicitor General was me.

JUSTIN GLEESON: Any breach of Australian law...

MARIAN WILKINSON: Collaery was furious.

BERNARD COLLAERY: I can tell you on my father's grave that neither Witness K nor myself have revealed the name of any serving ASIS Officer. And I'm not going to use cute words, the short answer is the proposition was nonsense and it was a low act and it was something I won't forget and I expect an apology for in due course.

MARIAN WILKINSON: Two weeks ago the International Court of Justice made a provisional order that Australia did not have to return the legal documents seized in the ASIO raids. But Australia could not use them against East Timor.

The judges also made another extraordinary order.

JUDGE: By 15 votes to one, Australia shall not interfere in any way in communications between Timor-Leste and its legal advisors...

MARIAN WILKINSON: In effect they told Australia not to spy on East Timor and its lawyers in any maritime negotiations between the two countries.

JUDGE: I declare this sitting closed.

MARIAN WILKINSON: It was a victory for the East Timorese, because fighting the maritime boundary dispute with Australia is their main game.

ALFREDO PIRES: We basically asked the question, what is ours? If it's ours then it's ours. And who should determine what is ours? And for us, it's very simple, international law.

MARIAN WILKINSON: Looming large over Dili harbour, a giant statue of Jesus stares out to sea - a gift from Indonesia's president Suharto during the brutal occupation of East Timor by his troops.

Timor's seas were carved up for their oil and gas reserves during that bloody occupation.

(Sound of archival footage of the Santa Cruz massacre on November 1991)

MARIAN WILKINSON: Despite massacres like that at the Santa Cruz cemetery in Dili, Australia accepted Indonesia's occupation.

(Sound of gunfire and sirens)

MARIAN WILKINSON: Two years earlier, in 1989, then foreign minister, Gareth Evans, signed The Timor Gap Treaty with his Indonesian counterpart; dividing the oil and gas wealth in the Timor Sea between Australia and Indonesia.

(Sound of clapping)

GARETH EVANS: Now where's the champagne?

(Gareth Evans and ministers drink champagne)

MARIAN WILKINSON: Under the treaty, East Timor was left without maritime boundaries, the Timor gap. Instead Australia and Indonesia created an oil and gas zone of cooperation to share the wealth.

It ignored East Timorese calls for the maritime boundary to be at the halfway or median line with Australia.

The Treaty was condemned internationally.

PETER GALBRAITH, FORMER NEGOTIATOR FOR TIMOR-LESTE: It was the view of the UN mission at that time that the treaty was illegal because Indonesia did not have title to East Timor. Its occupation was illegal, therefore it had no capability to dispose of the oil and gas resources of the, that did not belong to Indonesia.

(Sound of helicopters)

MARIAN WILKINSON: In 1999 Australia was forced to re-think the Treaty when the East Timorese achieved their independence.

Australian troops led the UN intervention force into a grateful East Timor as Indonesia withdrew amidst violence and chaos.

(Archival footage from Four Corners story, 'Rich Man, Poor Man', 2004)

PETER GALBRAITH: East Timor is the legal owner of this territory.

MARIAN WILKINSON: Former American diplomat, Peter Galbraith, was chosen by the UN to lead new negotiations with Australia over the Timor Gap Treaty.

PETER GALBRAITH: Australia did not want to have a maritime border at all, because ah they were concerned if they accepted what was by 2000 absolutely bright line international law - which is the border should be halfway between the two countries - that this could undermine their border with Indonesia. So what Australia wanted to do with regard to the Timor Gap was to set aside the border issue and to have an arrangement about the management of the oil resource.

MARIAN WILKINSON: Alexander Downer was foreign minister in the Howard government, directing the negotiations with the UN.

ALEXANDER DOWNER, FOREIGN AFFAIRS MINISTER, 1996-2007: And if we had made special provisions for East Timor, then naturally enough the Indonesians would've come back to us and said, well, in that case why should we adhere to these earlier treaties? And then in that context all of our maritime boundaries and seabed agreements would unravel, and that would be diplomatic folly for Australia.

MARIAN WILKINSON: But Peter Galbraith also remembers Australia was strongly pushing the case of the oil and gas companies.

PETER GALBRAITH: The Australian government was shockingly close to the oil companies and this I, I saw most dramatically at the beginning in, when I went down and I saw foreign minister Downer and I presented the East Timor position.

ALEXANDER DOWNER: We were close to all stakeholders and we would've been derelict in our duty had we not been. Galbraith was working for the United Nations, that's a different thing; the United Nations doesn't have an oil company. But of course when we're involved in negotiations we maintain contact with Australian companies. The Australian government isn't against Australian companies, or if it is it's derelict in its duty. The Australian government supports Australian business and Australian industry. The Australian government unashamedly should be trying to advance the interests of Australian companies.

(Sound of singing and dancing in East Timor Independence celebrations 2002)

MARIAN WILKINSON: In May 2002 officially celebrated its independence.

(Sound of fireworks)

JOSE RAMOS HORTA: John Howard, you are a friend of East Timor. Your support to our small nation is invaluable.

MARIAN WILKINSON: Desperate for income, East Timor signed a new Timor Sea Treaty with Australia 'to get the gas money flowing'. But the tough arguments over a maritime boundary and who owned what were put on hold.

In 2004, East Timor's first prime minister, Mari Alkatiri, made a fresh attempt to negotiate the maritime boundary with Australia.

He hired Peter Galbraith as East Timor's lead negotiator.

Despite a show of ceremonial friendship, the talks between Australia and East Timor were hostile. Alkatiri bluntly accused Australia of plundering the oil and gas in the Timor Sea.

DR MARI ALKATARI, FORMER PRIME MINISTER OF TIMOR-LESTE
(ADDRESSING CONFERENCE): Timor-Leste loses \$1 million a day due to Australia's unlawful exploitation of resources in the disputed area. Timor-Leste cannot be deprived of its rights or territory because of a crime. Thank you.

MARIAN WILKINSON: The response from Australia, at the time, was indignation.

ALEXANDER DOWNER (ARCHIVAL INTERVIEW): I think they've made a very big mistake thinking that the best way to handle this negotiation is trying to shame Australia, is mounting abuse on our country...accusing us of being bullying and rich and so on when you consider all we're done for East Timor.

PETER GALBRAITH: The Australians were faced with a dilemma, which is that they were obliged under international law to negotiate in good faith for a maritime boundary, but they didn't actually want to have one.

ALEXANDER DOWNER: Our argument has been the more traditional argument in relation to international maritime law, that you take into consideration the continental shelf and a whole range of other factors by the way. So it isn't simple, it's a fairly complex formulation that had been used, had been agreed to by Indonesia and we didn't want to change um that formulation.

MARIAN WILKINSON: At stake in the 2004 maritime boundary talks was the biggest oil and gas field ever discovered in the Timor Sea. It's called Greater Sunrise.

(Minister Pires showing Marian o map of area)

ALFREDO PIRES: So Greater Sunrise here and we have expert opinion that ah there's a pretty good chance that all of Sunrise would fall under Timor-Leste's jurisdictions.

MARIAN WILKINSON: Petroleum minister, Alfredo Pires, was advising East Timor's government back in 2004. The arguments were the same as they are today. Who owns the estimated \$40 billion Greater Sunrise field - East Timor or Australia?

[Talking to Pires] And the critical boundary that everyone talks about in this is what's called the eastern boundary. Is that right?

ALFREDO PIRES: That's right, that's a part because it involves the big field.

MARIAN WILKINSON: A joint petroleum development area was in place in 2004 shared between East Timor and Australia. Greater Sunrise lay 20% in that area and 80% in Australian waters.

East Timor argued a fair reading of international law would not only put the maritime boundary south to the median line with Australia, it would also, critically, push the boundary east, putting most, if not all, of Greater Sunrise into its territory.

[Talking to Pires] And what's your view on Greater Sunrise?

ALFREDO PIRES: It belongs to Timor-Leste, all of it.

(Four Corners archival, 2004)

PETER GALBRAITH: So from the top of the agenda...

MARIAN WILKINSON: Back in April 2004 Peter Galbraith and the East Timorese negotiators pushed their case hard.

PETER GALBRAITH: Nuno will outline the legal case...

MARIAN WILKINSON: Within weeks their talks with Australia were bogged down in acrimony.

Four Corners now understands this is when the Australian government decided to launch the top secret bugging of East Timor's prime minister and his negotiating team.

PETER GALBRAITH: It's like a burglar; it's like the Watergate and the famous case in the US that brought down Richard Nixon. You know when you when you actually break in to somebody's office and you plant a bug, that's a kind of a true intrusion that is, it feels different certainly than if you're listening to somebody's cell phone or intercepting their, their email.

(Marian in Dili outside the Government Palace)

MARIAN WILKINSON: The operation to bug the inner sanctum of the government offices here in Dili directly involved Witness K and a team of ASIS operatives. East Timor's negotiators now believe that spying operation gave the Australian side in the talks a big advantage.

Four Corners understands Australian intelligence agents were able to install the bugs in the Palace of Government, right inside the Prime Minister's conference room while it was being renovated under an Australian aid project.

PETER GALBRAITH: What would be the most valuable thing for Australia to learn is what our bottom line is, what we were prepared to settle for. There's another thing that gives you an advantage, you know what the instructions the prime minister has given to the lead negotiator.

And finally, if you're able to eavesdrop you'll know about the divisions within the East Timor delegation and there certainly were divisions, different advice being given, so you might be able to lean on one way or another in the course of the negotiations.

MARIAN WILKINSON: It's believed the four ASIS agents stayed at this floating hotel moored Dili Harbour after they entered East Timor with false identities. And the prime minister's meetings were monitored when negotiations resumed in Dili in October 2004.

We also understand Australia's embassy in Dili was directly involved in the operation; feeding the product of the bugging to the Australian side.

PETER GALBRAITH: It is the sort of thing that you would expect from the Soviet Union. I you know, it's hard to imagine that would really be done by a friendly government and especially for what were essentially commercial negotiations. That, that really seems- there wasn't a national security issue here for Australia. It wasn't as if you know the Timorese were posing some kind of military threat or hatching some kind of plot. This was really bugging for commercial advantage.

(Archival footage from March 2002, John Howard greeting people)

JOHN HOWARD, FORMER AUST. PRIME MINISTER: Hello how are you?.

MARIAN WILKINSON: The ASIS chief who oversaw the bugging was David Irvine, handpicked to head the spy agency after a successful stint as ambassador in China.

JOHN HOWARD: We have a very good relationship...

MARIAN WILKINSON: Irvine had spearheaded the Howard government's efforts to seal a \$25 billion gas deal with China for a group of companies led by Woodside Petroleum.

When Irvine took over ASIS, Woodside was had at lot at stake in the Timor Sea. It headed a consortium with huge oil and gas leases at Greater Sunrise.

Woodside's then chief executive Don Voelte, was determined to get it developed.

ALEXANDER DOWNER: Woodside is a huge Australian company and they were proposing to invest billions of dollars in Greater Sunrise to create wealth, which would inter alia have been wealth for Australians, but obviously substantially for the East Timorese as well. So I was all in favour of that. I was all in favour of it.

MARIAN WILKINSON: Woodside's Chairman, Charles Goode, was close to the Howard government. He also sat on the boards of top Liberal Party fundraising vehicles that generated millions of dollars in political donations.

ALEXANDER DOWNER: I know Charles Goode. I don't remember talking to Charles Goode about this issue because it was Don Voelte, the CEO, who came to see me.

MARIAN WILKINSON: Woodside executives led by Voelte lobbied the government strongly during the 2004 negotiations.

ALEXANDER DOWNER: Me, for my part, I reckon, I don't know, I mean I haven't checked, but I would've had certainly more than one, I should think three or four meetings with the CEO of Woodside and no doubt he had a couple of other people there and I would

talk to them about how the negotiations were progressing. Well, of course I did. But I mean like there's some . . .

MARIAN WILKINSON: I guess . . .

ALEXANDER DOWNER: ...additional secret, I can't think what there would've been...

MARIAN WILKINSON: Okay specifically . . .

ALEXANDER DOWNER: ...I mean they wanted...I can tell you what they wanted. They wanted a stable investment regime if they were to exploit the Greater Sunrise field. That's essentially what they wanted, so that's what they were lobbying us for, and we were happy to talk to them about that.

MARIAN WILKINSON: A key issue in East Timor's legal case today is whether the 2004 bugging here at the Palace of Government was done for Australia's national security interests, or for commercial interests.

The lawyer for Witness K and East Timor argues it was not done in Australia's national interests.

BERNARD COLLAERY: Our security services must operate within the legislation establishing them and in particular national interest objectives that are set by Parliament must be met and clearly it behoves the current Government to examine the national interest imperatives that drove this affair.

MARIAN WILKINSON: The Attorney-General rejects Collaery's argument.

GEORGE BRANDIS: I was not the minister at the time. I wasn't a minister in the government in 2004, but might I remind you that Australia disputes what is alleged against it in the arbitration and in the ICJ proceedings by Mr Collaery and his client.

MARIAN WILKINSON: Alexander Downer was the minister authorising ASIS at the time and responsible for the negotiations. He won't confirm the spying but says he did act in Australia's national interests.

ALEXANDER DOWNER: You don't need to ask me about the intelligence operation allegations because you know no Australian government, past or present, will ever get into any discussion about intelligence operations. But suffice it to say the um Australian government was on Australia's side in the negotiations and we did our best to make sure that we were ah able to achieve our objective, which was particularly an objective in relation to the delineation of the maritime boundaries.

(Howard and Downer signing treaty and laughing)

MARIAN WILKINSON: How much the bugging advantaged Australia is unclear. But in January 2006, both sides agreed to a new treaty covering Greater Sunrise.

(Sound of clapping as Downer shakes hand with East Timorese official)

JOHN HOWARD: Well done, Alexander...well done. Well very significant moment, we might say something to the media about it.

MARIAN WILKINSON: The CMATS Treaty came after both made big concessions.

In a major backdown, East Timor put on hold negotiations over its maritime boundaries for fifty years, agreeing to leave 80% of Greater Sunrise in Australian territory. In exchange, Australia agreed to split government revenues from Sunrise 50-50 with East Timor, a big jump from the 20% first offered.

ALEXANDER DOWNER: In the end we settled on giving them much more money than they were, under the Timor Sea Treaty, entitled to, which was fine by us.

MARIAN WILKINSON: But the Greater Sunrise deal had problems below the surface. Each side could terminate the treaty if there was no agreement to develop the gas field by 2013.

The East Timorese wanted the gas to be piped from Greater Sunrise to their south coast for processing - bringing jobs and development to one of the poorest parts of the country.

But Woodside's chief executive, Don Voelte, had other ideas.

DONE VOELTE: It's the beginning of next week when we deliver to the regulator the very thick and very detailed field development plan for the consideration with the governments of Timor-Leste and Australia.

MARIAN WILKINSON: Woodside and its partners, including Shell, argued it was cheaper to build a floating platform to process the gas offshore in the Timor Sea.

ALEXANDER DOWNER: The most expensive proposal was to build a pipeline into East Timor, and the problem with that over and above the cost is that the sovereign risk would be higher for the investor in East Timor. And of course by threatening to abrogate this treaty, they're just underlining the sovereign risk involved with any investment with East Timor.

AGIO PEREIRA, PRESIDENT OF COUNCIL OF MINSITERS, TIMOR-LESTE: For Timor-Leste the pipeline to Timor-Leste is very viable. All the arguments be technical or security have been proven to be wrong and Timor-Leste invested a lot in proving it.

(Sound up of cheering from rally)

MARIAN WILKINSON: After East Timor's one time resistance leader, Xanana Gusmao, became prime minister he led the campaign to build the pipeline. By 2011, he was willing to take on both Australia and Woodside to do it.

With billions at stake, Woodside hired a high profile lobbyist - former foreign minister, Alexander Downer.

Australia's Ambassador in Dili set up a meeting with Gusmao, saying Downer wanted a courtesy visit.

ALEXANDER DOWNER: I mean I wasn't lobbying them. I just asked them where their thinking was.

MARIAN WILKINSON: Downer had a message from Woodside's CEO saying the company would offer lots of development money if East Timor dropped the pipeline. But Gusmao was unmoveable.

ALEXANDER DOWNER, LOBBYIST, BESPOKE APPROACH: I could see that politically he was really wedded to this idea and he wasn't too interested in the floating LNG plant or the pipeline to Australia. So I mean I think basically, by the way, I think it's because of this that the East Timorese have started to get into changing their whole approach to the CMATS Treaty.

MARTIN FERGUSON, MINISTER FOR RESOURCES AND ENERGY, 2007-2013: Everyone knows it and it's freely admitted to by representatives of the Timor-Leste Government. It's known in the private sector, it's no secret. This is a particular campaign solely driven by Prime Minister Gusmão.

KIRSTY SWORD GUSMAO: Timor-Leste's leaders not only feel that it's within their rights, but that they have a duty actually to look again at that deal and see whether or not um it couldn't benefit more significantly.

MARIAN WILKINSON: Bernard Collaery as East Timor's legal advisor, sought out new ways to challenge the CMATS Treaty.

He consulted prominent UK barristers, including Sir Elihu Lauterpacht.

They told him Australia's bugging of Timor's negotiators back in 2004 could invalidate the CMATS Treaty by proving Australia had not acted in 'good faith' at the time.

AGIO PEREIRA: The whole legal case is based on the bugging of the government palace in Dili, of the negotiating team. It's entirely the Witness K's statement, no other statement, or names are included.

MARIAN WILKINSON: East Timor's secretly launched its own investigation into the bugging. It found the ASIS officers had left behind evidence in 2004 that could identify them. It convinced Dili the spying had taken place.

MARIAN WILKINSON: So you initiated an investigation to try and protect your side of this dispute?

ALFREDO PIRES: Yes. We heard that people are here back in those days, and it doesn't take a genius to work it out that they, they did not swim over. Those names are there. We don't want to put them at risk.

MARIAN WILKINSON: In December 2012, East Timor dropped its legal bombshell on Canberra.

In a confidential letter to Prime Minister Julia Gillard, Xanana Gusmao said the CMATS treaty was "invalid" because Australia had secretly eavesdropped on the private discussions of his predecessor and his advisers in 2004.

MARTIN FERGUSON: I went to Timor-Leste early in 2013 to try and kick-start negotiations again to get it back on an even playing field.

MARIAN WILKINSON: Martin Ferguson was Gillard's resources minister at the time.

MARTIN FERGUSON: I said to the representatives of the government at the time that if you're not careful, that opportunity is going to pass you by, Sunrise will be stranded. And I must say, unfortunately, that's my view as to where it's at.

(Sound of clapping at Abbott's election victory night, 7 Sept 2013)

TONY ABBOTT, PRIME MINISTER: My friends, my friends, thank you, thank you so much. I can inform you that the Government of Australia has changed for just the...

MARIAN WILKINSON: When Labor was swept from office by Tony Abbott last year, the deepening dispute with East Timor was handed over to the new Attorney-General.

(24 February 2014)

SCOTT LUDLAM: We had a rather senseless intervention then from the attorney-general.

GEORGE BRANDIS: No, no you put a proposition to Mr Irvine that was false.

MARIAN WILKINSON: George Brandis was briefed on the crisis by David Irvine, the former head of ASIS who signed off on the East Timor bugging operation in 2004.

Irvine is now the head of ASIO, the domestic spy agency. He advised Brandis to issue the warrants for the raids on Collaery and Witness K.

DAVID IRVINE: The object of the warrant was to obtain material that didn't specify specific documents in relation to security matter being investigated.

MARIAN WILKINSON: But Brandis insists Irvine had no conflict of interest when he gave his advice.

GEORGE BRANDIS: I'm entirely satisfied, in fact, I never had any doubt at all that Mr Irvine was exercising his powers and discretions in seeking this warrant to protect the interests that he was required um by his office and by the act to protect.

MARIAN WILKINSON: But under administrative law, if he had a conflict of interest shouldn't he have stood aside?

GEORGE BRANDIS: Well, you've suggested to me that he has a conflict of interest and I don't agree with you.

(Brandis speaking in Senate)

GEORGE BRANDIS: More generally you should know...

MARIAN WILKINSON: Neither Brandis nor Irvine would explain what was behind the warrants at a recent Senate hearing.

GEORGE BRANDIS: Neither confirm or deny...

MARIAN WILKINSON: But in its legal response to East Timor, the Government is alleging Witness K and Collaery may have disclosed highly classified secrets.

(Marian speaking to Brandis)

MARIAN WILKINSON: Did it go to the issue of disclosing operational matters and potential names of agents or former agents?

GEORGE BRANDIS: Well, again I just can't...disclose what the particular grounds were. But let me make this point: it has been said that this was to do with the Australia East Timor dispute over the oil and gas field in the Timor Sea. That was not the purpose or the ground on which the warrant was sought

MARIAN WILKINSON: Collaery rejects the notion Witness K, a decorated veteran, is a whistleblower at large.

BERNARD COLLAERY: This is no Snowden affair. There are no revelations to come beyond the fact that this eavesdropping operation took place. It's been properly controlled and there is a coherence of interests by both parties in having this conduct found to be unlawful.

MARIAN WILKINSON: And in saying that, Witness K is completely comfortable with how you have acted in this?

BERNARD COLLAERY: I must not discuss Witness K's issues in this interview. I can't, I can't do that.

MARIAN WILKINSON: East Timor's senior minister says no Australian agent has been put at risk.

AGIO PEREIRA: No, no. The government is, all government is conscious of the legitimate concern of Australia about national security and protection of its agents, and the government of Timor-Leste wouldn't do anything to jeopardise that.

MARIAN WILKINSON: The ASIO raids have clearly taken a toll on Bernard Collaery.

BERNARD COLLAERY: I'm getting grey. I've seen a lot of things...

MARIAN WILKINSON: He's relieved the International Court of Justice has provisionally ordered Australia to stop interfering with his legal communications with East Timor.

But for Collaery this is not enough.

BERNARD COLLAERY: There has to be a proper judicial inquiry into this affair.

ALFREDO PIRES: We look back at those who have fought for the onshore sovereignty of Timor-Leste and hundreds and thousands have died for our sovereignty back then, and now we still have an issue of sovereignty that needs to be solved.

MARIAN WILKINSON: The East Timorese have learnt how to fight for what they want over decades. But drawing the line on their maritime boundaries may be an elusive goal.

Its powerful neighbour to the south has a history of being a formidable opponent when it comes to deciding who controls the wealth beneath the water.

KERRY O'BRIEN: The international arbitration between East Timor and Australia and the maritime boundaries is due to begin in The Hague in September, but already according to one well placed source Australia has sent a blunt diplomatic message to East Timor, that the relationship will suffer as a result of their actions.

Next week on Four Corners the scandal that's engulfing the National Gallery of Australia and the international trade in looted antiquities.

Until then, good night.

END

Background Information

KEY DOCUMENTS

[George Brandis ministerial statement on ASIO raids](#) | **Ministerial Statement** | **Dec 2013**
- Execution of ASIO search warrants, by Senator George Brandis.

[The Greater Sunrise Oil and Gas Project](#) | **La'o Hamutuk** | **Updated 30 Jul 2012** - Jose Ramos-Horta invites 1,000 geologists and geology students to Dili to use their expertise to prove that Timor-Leste and Australia are on the same continental shelf, undercutting Australia's historical argument against a media line boundary.

RELATED NEWS COVERAGE

[Australia issues diplomatic warning to East Timor saying maritime boundaries case risks relationship](#) | **ABC News** | **17 Mar 2014** - The Australian Government has warned East Timor there will be tough consequences over its decision to launch international arbitration proceedings over its maritime boundary with Australia.

[George Brandis pleased with court ruling in East Timor spying case](#) | **SMH** | **5 Mar 2014**
- Attorney-General George Brandis' has declared that the federal government pleased with an International Court of Justice order that Australian intelligence agencies stop spying on East Timor and seal documents seized in an ASIO raid last year, sparking incredulity from his political opponents.

[AUDIO Did the walls have ears?](#) | RN Background Briefing | 23 Feb 2014 - Claims that Australia spied on East Timorese negotiators during oil and gas treaty talks in 2004 are at the centre of a legal row that could throw the treaty into doubt. Did Australia seek and gain an unfair advantage for itself and the petroleum company Woodside? Hagar Cohen investigates.

[Australia rejects East Timor's demands to return documents seized in ASIO raid](#) | ABC News | 22 Jan 2014 - Australia has defended last year's ASIO raids on a lawyer for East Timor and expressed offence at claims aired by the tiny nation in its case at the International Court of Justice.

[East Timor asks International Court of Justice in The Hague to pressure Australia over seized documents](#) | ABC News | 21 Jan 2014 - East Timor says Australia engaged in "unprecedented, improper and inexplicable" conduct when it raided the offices of a lawyer representing the tiny country in a dispute over an oil and gas treaty.

[Fact Check: Would spying on East Timor by ASIS be illegal?](#) | ABC Fact Check | 12 Dec 2013 - Spying by the Australian intelligence services on officials of other countries is an issue that just will not go away. The latest controversy concerns Australia's relationship with East Timor.

[Former East Timorese president Jose Ramos-Horta condemns Australia over spying claims](#) | ABC News | 11 Dec 2013 - East Timor's former president Jose Ramos-Horta says Australia would never have secured a seat on the United Nations Security Council had claims that it spied on its neighbours been known.

[Australian Government was informed about whistleblowers in spying case, East Timor says](#) | Australia Network News | 7 Dec 2013 - East Timor says the Australian Government knew it would call upon the testimony of four whistleblowers in its dispute regarding a \$40 billion oil and gas treaty.

[ASIO raided office of lawyer representing East Timor in spying case](#) | ABC News | 4 Dec 2013 - A lawyer representing East Timor in its spying case against Australia says his office has been raided by the Australian Security Intelligence Organisation (ASIO). By Peter Lloyd.

[VIDEO Bernard Collaery, Lawyer for East Timor](#) | Lateline | 3 Dec 2013 - Bernard Collaery whose office and home were raided by ASIO discusses the action and the legal case in The Hague.

[VIDEO East Timor accuses Australia of spying for economic gain](#) | ABC 7.30 | 27 Nov 2013 - East Timor is accusing Australia of bugging its cabinet for commercial advantage and threatening to end a lucrative gas treaty over the claims.

[AUDIO East Timor offers up funds for onshore gas processing](#) | ABC PM | 3 Sep 2013 - East Timor's government has made a new bid to resolve a dispute over the stalled Greater Sunrise gas project in the Timor Sea. It's offering to put up \$800 million to build a pipeline so the gas can be processed onshore on East Timor's south coast.

AUSTRALIA - TIMOR-LESTE TREATIES

[Australia-Timor-Leste Maritime Arrangements](#) | DFAT - Australia and Timor-Leste brought the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS Treaty) and 2003 International Unitisation Agreement for Greater Sunrise (IUA) into force on 23 February 2007. The treaties establish a framework for the exploitation of the Greater Sunrise gas and oil resources and will see the equal sharing of upstream Government revenues flowing from the project. The CMATS Treaty represents an opportunity to underpin further the income and development of one of Australia's closest neighbours, while at the same time putting on hold the Parties' claims to jurisdiction and maritime boundaries in the Timor Sea for fifty years.

[Information about the Treaty between Australia and Timor-Leste on Certain Maritime Arrangements in the Timor Sea \(CMATS\)](#) | La'o Hamutuk | Updated 10 Mar 2014 - Background on the treaty.

[Timor Sea Treaty Between the Government of East Timor and the Government of Australia](#) | 20 May 2002 - The treaty was signed by Australia and East Timor in Dili on 20 May 2002, for the exploration and exploitation of petroleum resources in the Joint Petroleum Development Area for the benefit of both countries.

[Media Release: Arbitration under the Timor Sea Treaty](#) | Senator Bob Carr, Minister for Foreign Affairs | 3 May 2013 - Timor-Leste notified Australia on April 23 that it has initiated arbitration under the 2002 Timor Sea Treaty of a dispute related to the 2006 Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS).

[Minding the Gap: The Australia-East Timor Treaty on Certain Maritime Arrangements in the Timor Sea \(CMATS\)](#) | University of Wollongong | 2007 - Academic paper by Clive Schofield.

RELATED READING

Shakedown: Australia's grab for Timor oil (2007), written by Paul Cleary and published by Allen & Unwin.

RELATED FOUR CORNERS PROGRAMS

[Taxing Times in Timor](#) | 1 Oct 2012 - Four Corners travels to Timor-Leste to detail a no holds barred struggle that involves billions of dollars from energy processing. [Watch online.](#)

[Stoking the Fires](#) | 19 Jun 2006 - When the East Timorese grabbed their independence and, with the help of Australian-led forces, withstood the murderous onslaught of Indonesia-backed militiamen, the world saluted their courage. Seven years on, the Australian soldiers are back, trying to stop more bloodshed. [Watch online.](#)

[Rich Man, Poor Man](#) | 10 May 2004 - The fight between Australia and East Timor over billion dollar oil and gas interests. Reporter: Jonathan Holmes.

LINKS

Anti-Corruption Commission of Timor-Leste | [@cactimor](#) - Official website of the Anti-Corruption Commission of Timor-Leste published in English. [cac.tl/](#)

AusAID | East Timor - Australia provides assistance to help build new institutions and to deliver basic services like health and access to water and sanitation.

www.dfat.gov.au/.../timor-leste/

Australia East Timor Friendship Association - Advocacy for human rights and self-determination of the East Timorese people. aetfa.org.au/

ETAN | [@etan009](https://twitter.com/etan009) - East Timor and Indonesia Action Network works for justice, democracy, rights. www.etan.org/

Government of Timor-Leste - Official Government website in English. timor-leste.gov.tl/

La'o Hamutuk: The East Timor Institute for Reconstruction Monitoring and Analysis - An independent organisation which works to facilitate effective Timorese participation in the reconstruction and development of the country. www.laohamutuk.org/

The National Petroleum Authority - ANP is Timor-Leste's body responsible of managing and regulating petroleum activities in its exclusive jurisdictional areas. www.anp-tl.org/

Timor Sea Justice Campaign | [@TimorSeaJustice](https://twitter.com/TimorSeaJustice) - Timor Sea Justice Campaign is calling on AusGov to negotiate permanent maritime boundaries with Timor-Leste in accordance with international law. www.timorseajustice.com/

UN Development Program Timor-Leste - UNDP has been working in Timor-Leste since 1999 and provides technical advice and assistance to build strong and capable public institutions. www.tl.undp.org/