

Witness K and the Australian spying operation that continues to betray Timor-Leste

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Kim McGrath – *The Guardian* – 12 July 2020

Charges against Bernard Collaery and his retired ASIS agent client confirm the government has few regrets about an exploitative exercise against a friendly neighbour

In the first week of January 2019, a private jet landed at Presidente Nicolau Lobato International Airport in Dili, the capital of [Timor-Leste](#). The former Victorian premier Steve Bracks emerged into the monsoonal heat and was greeted by staff from the office of Xanana Gusmão, Timor-Leste's chief maritime boundary negotiator. They drove Bracks to the waterfront café at the Novo Turismo Resort and Spa, where Gusmão was waiting.

The subject of the meeting was Bernard Collaery, Gusmão's former lawyer, who was pleading not guilty to breaches of Australia's intelligence act. Collaery's charges related to an Australian Secret Intelligence Service operation in Dili in 2004, in which Canberra is believed to have recorded Timor-Leste officials' private discussions about maritime boundary negotiations with Australia. In 2013, the Australian government revealed the allegations of spying.

Five years later, in June 2018, the attorney general, Christian Porter, consented to charges being laid against Collaery and his client, a retired Asis agent known only as Witness K, for "conspiring to reveal classified information". Gusmão led the Timorese resistance against the Indonesian occupation in the mountains of East Timor and, after his capture in 1992, from his jail cell in Jakarta. In 2002, he became Timor-Leste's first president, and later served as its prime minister.

Bracks says Gusmão wanted to know what he could do to support Collaery, who had been his lawyer following Timor's independence from Indonesia in 1999. Gusmão saw it as a moral issue. He said he would travel to Canberra if necessary, to give evidence in support of Collaery and Witness K, because, he told me, it would be against his conscience not to. He saw them as "honourable men" who should have been lauded for their actions. From his viewpoint, they had revealed a crime. A crime against one of the poorest countries in the world, by one of the richest.

Gusmão planned to go to Canberra to give evidence in the trial, until Covid-19 restrictions prevented him from travelling. Last month, the Australian Capital Territory supreme court ruled that essential parts of the trial would be heard in secret.

'No avenue to raise concerns'

The prosecution of Collaery and Witness K throws a spotlight on the nexus between politics and intelligence, and the unfettered power of ministers in Australia's intelligence regime.

Unfortunately for Collaery and Witness K, and the 7,000 staff currently working in Australia's intelligence agencies, it also shows that opportunities for an operative to challenge a direction to perform an immoral or illegal act are limited and likely to be career-ending.

Australians accept the need for extreme secrecy around spying operations aimed at combating terrorism and other security threats. But does that social licence extend to using espionage for illegal, immoral or corrupt acts? Should the state use its spies against a friendly government for purely economic gain, either for the state or for private companies?

The leading security analyst Desmond Ball warned that “the relationship between intelligence and policy is complex and delicate. It can easily become politicised, so demeaning the intelligence process and ultimately risking national security.” This is what happened in Canberra in 2004–05. And it is arguably what drove Witness K to later raise with the Inspector General of Intelligence and Security disquiet within Asis about the operation.

The office of the IGIS is responsible for ensuring Australia's intelligence agencies act “legally and with propriety, comply with ministerial guidelines and directives and respect human rights”. In early 2008, Witness K approached the IGIS, Ian Carnell, alleging that a cultural change within Asis had led to his constructive dismissal. According to a statement Collaery made to federal parliament, part of the complaint involved an operation Witness K “had been ordered to execute in Dili, Timor-Leste”.

Collaery is restricted by national security legislation from talking about the operation. Clinton Fernandes, an Australian Intelligence Corps officer from 1997 to 2006 now at the University of New South Wales, is not so constrained. In his 2018 book *Island off the Coast of Asia*, Fernandes writes that the listening devices installed in the Palácio do Governo “were turned on and off by a covert agent inside the building. They then beamed the recording by microwave signal to a line-of-sight covert listening base set up inside the Central Maritime Hotel ... The digital recordings were then allegedly couriered across town to the Australian embassy, and sent to Canberra for analysis.”

The 127-room Central Maritime Hotel was a converted Russian hospital ship that was rebuilt in Finland, used as a hotel in Myanmar and then towed to Dili because there were no hotels or restaurants of suitable standard for international visitors. It was conveniently moored opposite the waterfront white-stuccoed Palácio do Governo.

The 2005 Commission for Reception, Truth and Reconciliation in East Timor estimated that more than 150,000 people, a quarter of the population, were murdered or deliberately starved to death between 1974 and 1999, when the territory was under Indonesian rule – a brutal occupation aided and abetted by Australia. In 2004, when the Dili bugging occurred, the Timorese remained physically and emotionally traumatised.

Retired diplomat Bruce Haigh says Asis officers involved in the Dili operation were put in an impossible position: “People in Asis are not devoid of conscience. I've known many Asis and Asio officers over the years ... They want to keep Australia, and Australians, safe. They would object to such an immoral operation, but there is no avenue for them to raise concerns.” The former Asis spy Warren Reed argues that most intelligence officers have “a keen sense” of democratic values and “will generally stand firm against attempts by their service's management to diverge from those widely accepted norms of behaviour”.

Timorese ‘knew they’d been duded’

Australia’s objective in the negotiations was to retain rights to hydrocarbon-rich areas of the Timor Sea much closer to Timor than to Australia. In the early 1960s, Australia issued petroleum exploration permits in the Timor Sea to Woodside, now Australia’s largest natural gas producer, in areas contested by Indonesia and Portuguese Timor. Australia refused Portugal’s requests for talks and instead negotiated a treaty with Indonesia in 1972. The agreed boundary skirted the edges of the permits issued to Woodside and other companies – well north of the median line. Woodside discovered the Greater Sunrise oil and gas fields in 1974.

The following year, with Australia’s covert support, Indonesia invaded Portuguese Timor. Unlike Portugal, which had argued for a median-line boundary, Indonesia suggested joining the end points of the 1972 treaty, which would have put Greater Sunrise entirely in Australian waters. Despite UN resolutions calling on Indonesia to withdraw, Australia commenced negotiations with Indonesia in 1979 to agree on a boundary between Australia and occupied East Timor. This amounted to Australia formally recognising Indonesia’s sovereignty in Timor, the only Western nation to do so.

When the Democratic Republic of Timor-Leste came into existence on 20 May 2002, the Howard government considered the possibility of Timor-Leste gaining sovereignty to the median line in the Timor Sea such a threat “to Australia’s national security, foreign relations or economic well-being” that it was apparently necessary to direct Asis (and possibly other intelligence agencies) to support Australia’s negotiating team on the maritime boundary. This was a damning indictment of Australia’s negotiators, some of the best and brightest lawyers in government, backed by the resources of multiple departments. Timor-Leste’s team was led by former US ambassador Peter Galbraith, supported by a handful of idealistic young lawyers.

In October 2004, the Dili bugging operation reportedly commenced during the second round of boundary negotiations between Australia and Timor-Leste. Despite the Asis budget expansion, officers with the technical skills to install listening devices in the cabinet room of a foreign country were in short supply. As Fernandes explains, installation is a delicate operation. “You need physical access to the room, so you have to invent a plausible story. Then you have to map the geometry of the office, check the acoustics, work out where to place the listening devices, and because it’s going to go on for several weeks or months, you need a power source.” And in this case, where the cover story involved renovating the government offices under the guise of an Australian aid program, Asis needed skilled tradespeople to carry out the renovations.

The Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) was signed in January 2006 by foreign ministers Alexander Downer and Jose Ramos-Horta. While CMATS was publicly applauded as a win by both nations, it was in fact another major victory for Australia, given international law clearly favoured a median-line boundary. As Collaery told Steve Bracks in April 2020, the Timorese “knew they’d been duded, they just didn’t know how”.

Australia shamed to the negotiating table

By 2012 Gusmao had become aware of the bugging and initiated confidential proceedings in the Permanent Court of Arbitration in The Hague, seeking to have CMATS declared void because Australia had acted in bad faith by spying during the negotiations. Witness K was to be Timor-Leste's lead witness. Oddly, it was the Gillard government that made the spying allegations public. On 3 May 2013, the then foreign minister Bob Carr and attorney general Mark Dreyfus issued a statement advising that Timor-Leste had initiated arbitration: "Timor-Leste argues that ... Australia did not conduct the CMATS negotiations in 2004 in good faith by engaging in espionage ... Australia has always conducted itself in a professional manner in diplomatic negotiations and conducted the CMATS treaty negotiations in good faith."

This sent a chilling message. In Australia, it confirmed that the government will not tolerate dissent

ABC Radio Darwin reported on the statement, but the dispute was ignored by the national media until Leo Shanahan published a story in the Australian on 29 May 2013. According to the article, "Downer directly authorised the operation to listen covertly to the negotiations in a cabinet room built with Australian aid". In September, the Coalition, led by Tony Abbott, won the federal election. In December, Asio and the Australian federal police executed a search warrant on Collaery's home and chambers, issued by the then attorney general George Brandis under powers given after September 11, 2001 to combat terrorism. David Irvine, the director general of Asis at the time of the Dili maritime boundary negotiations, was then director general of Asio. Witness K's home was simultaneously raided and his passport confiscated.

After years of further negotiations between Canberra and Dili, the end result was a Timor Sea boundary that essentially followed a median line and gave Timor-Leste a larger share of Greater Sunrise. A treaty was signed at the United Nations in New York in March 2018. This was the outcome the Howard government was desperate to avoid in the negotiations more than a decade earlier – so desperate that it allegedly diverted intelligence assets from the war on terror to assist Australia's negotiating team in Dili.

The Dili spying operation shamed Australia to the negotiating table. It focused attention on Australia's hypocritical criticism of China's South China Sea claims and made a mockery of Australia's backing of the "international rules-based order". The resolution of the dispute meant that for the first time since Timor-Leste's independence, the Australia-Timor-Leste relationship was not poisoned by the conflict. As Timor-Leste's minister of state, Ágio Pereira, told a reception after the signing ceremony, the treaty marked a "new chapter in the bilateral relationship".

But instead of moving to cement this new beginning, in June 2018, four months after the treaty signing, five years after the Dili bugging operation became public and 14 years after it occurred, the attorney general, Christian Porter, in what was now the Morrison-led Coalition government, consented to charges being laid against Collaery and Witness K. This sent a chilling message. In Australia, it confirmed that the government will not tolerate dissent, and had few regrets about an exploitative operation against a friendly neighbour. In Timor-Leste, it was seen as yet another betrayal.

- This is an edited extract of Kim McGrath's essay Drawing the Line from the latest [Australian Foreign Affairs - Spy v Spy](#), published on Monday. She is a researcher and author of Crossing the Line: Australia's Secret History in the Timor Sea.