

Country on our conscience

Why Australia should apologize to the Timorese

By Kieran Pender

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OIL UNDER TROUBLED WATER

Australia's Timor Sea intrigue

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Bernard Collaery

Deep beneath the waves of the Timor Sea, a passage of the Indian Ocean separating Australia from Timor-Leste, vast quantities of oil and natural gas are buried. In 2004, officials from the two states met in the oppressive heat of Timor's capital, Dili, to negotiate a new resources treaty. Two years earlier, following a decades-long struggle for independence from Indonesia, Timor-Leste had become the world's newest nation. With their war-damaged homeland marked by severe poverty, Timor's leaders were desperate for a fair share of the multi-billion-dollar hydrocarbon wealth.

The Timorese did not know it at the time, but the deck was stacked against them. Australian spies had planted listening devices in the offices of Timor-Leste's cabinet. Australian diplomats were privy to the exact negotiating strategy of their counterparts, and ruthlessly capitalized on Timor's desperation. By the time a treaty was signed in 2006, the two nations had agreed to divide the spoils evenly. This was despite Timor's stronger claim to the resources under international law

Australia has never publicly admitted its malfeasance. An attempt by Timor-Leste to invalidate the treaty because of this espionage, begun in the Permanent Court of Arbitration in The Hague, was dropped, though the agreement has been renegotiated more favourably for the Timorese. But now two Australians are to be tried for exposing the wrongdoing. "Witness K", a former spy, and his lawyer Bernard Collaery are being prosecuted for revealing that Australia bugged its nearest neighbour. Preliminary aspects of the case were due to be litigated earlier this year, but were delayed due to [Covid-19](#). A final trial date is yet to be scheduled

Despite facing the prospect of jail, Collaery – who was recently awarded the Blueprint for Free Speech whistleblowing prize – has gone on the front foot with the publication of *Oil Under Troubled Water*. Across 400 pages, including extensive endnotes, he exhaustively details the history of Australia's relations with Timor-Leste. Collaery argues that corporate and national profits have been the primary drivers of Australian policy towards Timor in recent decades. The book is, for its author, "as much about the history of events affecting East Timor as it is a lament about the moral decay in Australian political leadership". While not all critiques are novel, some – supported by original archival research in Canberra and London – land fresh blows.

For a country of seemingly robust democratic rights and freedoms, Australia appears to have presided over a remarkably Kafkaesque turn of events. In 2013, days before Witness K was due to travel to The Hague to give evidence, Australia cancelled his passport. Australian police also raided the offices of Collaery, a long-time adviser to the Timorese government, seizing legal advice that he had provided relating to the international litigation. The ongoing prosecution, meanwhile, has been shrouded in secrecy; even Collaery's own defence team has not been able to see materials tendered against their client.

These developments receive only limited attention in *Oil Under Troubled Water*. Before publication, Collaery was sent a threatening letter from the Australian government reiterating his obligations under secrecy laws. In the preface, he sounds a note of regret: “in different circumstances much more could be added to the debate”. Even so, the book contains copious material for readers interested in Australia’s attitude towards its neighbour, the poorest nation in Southern Asia. “East Timor”, writes the eminent Australian barrister Geoffrey Robertson in the foreword, “is the country on our conscience.”

The tropical island of Timor, verdant and mountainous, initially elicited the interest of European powers in the sixteenth century. Portuguese traders arrived first, and were soon followed by the Dutch East India Company. Ultimately the island was divided in half, with Dutch Timor in the west and Portuguese Timor to the east. (“Timor” itself derives from the Malay word for “east”, meaning East Timor, or Timor-Leste in Portuguese, is essentially “East East”.)

Aside from quashing several rebellions, Portugal expressed only modest designs on the distant colony until the [Second World War](#), when it was occupied by Australian forces in anticipation of a Japanese assault. Collaery begins here, highlighting Portugal’s umbrage at the move and the inception of Australia’s own interest in the island. While Australian forces were fighting Japan in Timor’s highlands, Portugal’s leader António de Oliveira Salazar used his nation’s strategic importance to the Allies to secure guarantees over Timor’s lusophone future. Subsequent Australian entreaties to the US and UK to gain control of Timor fell on deaf ears.

Dutch Timor became a part of Indonesia after Indonesian independence in 1949, while Australia kept its sights on the Timor seabed. In the 1950s its parliament passed fishing laws claiming jurisdiction beyond its entitlements under international law. A decade later, the government granted resource exploration licences in the same zone. Collaery charts the ministerial deliberations behind these maritime claims, meticulously analysing previously unexplored cabinet documents. The Australian government took heart from Portugal’s failure to publicly protest against these manoeuvres.

These machinations gained a more distasteful hue in the 1970s. As Portugal shed itself of colonial possessions and East Timor sought independence, Indonesia contemplated annexation. While outwardly supporting Timorese self-determination, in private Australian diplomats and politicians endorsed an Indonesian invasion – and, as Collaery shows, they even told Indonesia to ignore Australia’s public pronouncements. Collaery cites a cable in August 1975 from Australia’s ambassador to Jakarta, Richard Woolcott, observing that a favourable maritime treaty “could be much more readily negotiated with Indonesia ... than with Portugal or independent Portuguese Timor”

Collaery also sheds fresh light on the tragedy of the “Balibo Five”, journalists who were murdered as the Indonesian military carried out covert activity on the island in October 1975. A review of the atrocity by Australia’s Intelligence Inspector-General, Bill Blick, found that the government “had no intelligence material that could have alerted it in advance to the possibility of harm”. But Collaery shows that Australia did have prior knowledge of the hazardous situation, citing a memo from Britain’s ambassador in Jakarta, John Ford, describing the journalists, from the Indonesian perspective, as a “hurdle to be got over”. This revelation will resonate in Australia, where the Balibo Five are still widely remembered.

On December 7, 1975, Indonesia invaded East Timor, sparking a war that would over the subsequent two decades result in at least 100,000 deaths, around a fifth of East Timor’s population. The occupation is considered by some scholars to constitute genocide. Canberra, writes Collaery, would “share the spoils of invasion, turn a blind eye to genocide and compromise Australia’s virtue”. In doing so, the nation managed to secure a favourable oil and natural gas treaty with Indonesia.

In 1999, after international pressure, the Timorese were granted a referendum. Almost 80 per cent of voters chose independence. Further violence ensued, in what Collaery describes as an Indonesian response of “scorched-earth”, ultimately precipitating a UN intervention. Resources remained

Australia's priority. In February 2000, "to the puzzlement of the newly liberated Timorese, still picking through the ashes of their burnt-out towns", Australia and the UN-led interim administration announced a continuation of the extant treaty with Indonesia. In the subsequent years, apparently aided by listening devices, Australia manipulated Timor-Leste into a new agreement. A further treaty was concluded in 2018, resolving some outstanding maritime disputes and pieces of international litigation. Essentially, Australia paid its poorer neighbour off.

Oil Under Troubled Water is an important book, though it is not a particularly compelling one: heavy on historical detail, light on context and narrative thread. As an adviser to the Timor independence movement, Collaery took part in many of the events chronicled, yet he offers limited first-hand insight. Occasional titbits are colourful: he describes an exchange between the Timorese leaders José Ramos-Horta and Xanana Gusmão, the latter warning the former of the need to "take care with his tongue, the resistance's great asset", as the Nobel peace laureate, Ramos-Horta, "fastidiously picked a sardine from a can with an old dagger". Readers wanting more are left disappointed, with anecdotes infrequently deployed amid the diplomatic history and legalistic prose.

In February, an Australian Senate committee concluded an inquiry into one aspect of the Timor affair: the steps Australia took to avoid legal responsibility by withdrawing from the relevant jurisdiction of international courts. While a bipartisan group of senators rubber-stamped Australia's actions, the independent parliamentarian Rex Patrick criticized his country's "sordid behaviour" towards its neighbour. "In recommending things should stay the same", he concluded in his report, the committee had joined "in the effort of rowing Australia's Timor-Leste boat of shame."

For now, Collaery's proposal of "a national apology to the Timorese" appears to be forlorn. Such a step would first require the Australian government to admit foul play – something about which the prosecution is in itself a tacit admission. During a Senate committee hearing, Patrick interrogated the head of the government's legal department about Collaery's trial. "I presume most criminal cases are not launched on the basis of a fictitious operation?" the senator asked. "I would hope not", was all the senior civil servant could reply.

Kieran Pender is an Australian writer and lawyer based in London