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ASIO raids designed to show Timor who's boss

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Australia risks being seen as a local sheriff riding roughshod over Timor-Leste to get what it wants.

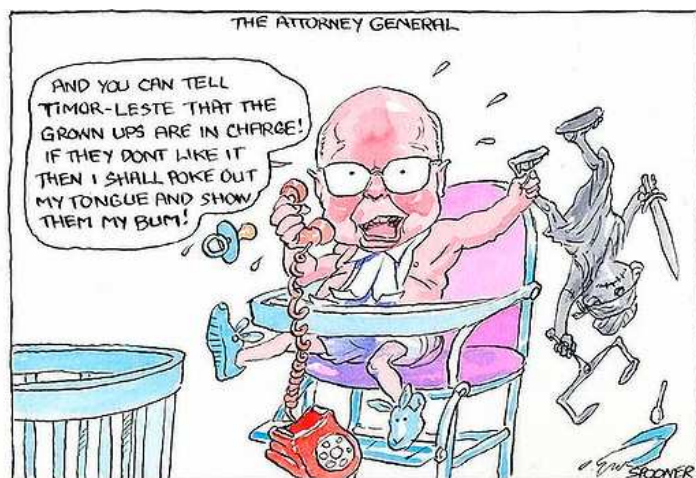


Illustration: John Spooner.

Tuesday's ASIO raid on the offices of lawyer Bernard Collaery was the latest ham-fisted Australian attempt to put the Timorese in their place.

Collaery is one of the lawyers for the government of Timor-Leste in an international arbitration between the two governments under the 2002 Timor Sea Treaty to determine the validity of the subsequent 2006 CMATS Treaty (Treaty on Certain Maritime Arrangements in the Timor Sea).

What Australian government officials have never understood or accepted is that the Timorese are committed to being a good neighbour and a reputable international citizen. The Timorese just continue to think that they have been dudded by their big neighbour when it comes to negotiating equitable arrangements for the oil and gas in the Timor Sea lying under a seabed not yet subject to a boundary determination.

Small and poor, the Timorese do have sufficient resources from their oil and gas to hire the best lawyers when they're needed. In this arbitration, they are being represented by Sir Elihu Lauterpacht, the doyen of international lawyers, and Oxford's Professor Vaughan Lowe. Imagine if Australian officials had raided their offices.

Under CMATS, Australia and Timor-Leste agreed to divide the upstream revenue share from the Greater Sunrise gas field 50:50 and to put on hold any negotiation of maritime boundaries for 50 years.

Australia has long claimed that if a maritime boundary were properly drawn with Timor-Leste, Australia would be entitled to 80 per cent of the revenue from Greater Sunrise. Timor claims it would be entitled to more than 50 per cent and that on one reading, it would be possible to draw a maritime boundary with the whole of Greater Sunrise on the Timor side of the line.

The present joint venturers for Greater Sunrise include the Australian company Woodside and Shell. Many Timorese citizens think that Woodside and the Australian government have not conducted themselves at arm's length. They think that people like Gary Gray and Alexander Downer have played roles for Woodside and the Australian government that display too much of a coincidence of interests. Timorese government leaders have had to keep these street suspicions in check. In February, the time had elapsed for the initial consideration of development applications under CMATS and either party was then free to terminate the treaty. But if Greater Sunrise were to be developed at a future time, the CMATS provision postponing boundary negotiations would be automatically resurrected. This explains Timor's opting for an arbitration questioning the validity of the treaty. If the treaty is invalid, the way could be clear for a commencement of boundary negotiations. And the Timorese might then be in with a chance of developing Greater Sunrise on their own, and on their terms.

At the arbitration, the Timorese will argue that the treaty is invalid because Australia did not negotiate in good faith. There is not only the general requirement of the Vienna Convention on the Law of Treaties, which notes that "the principles of free consent and of good faith" are universally recognised, but also the Timor Sea Treaty, which specifically requires that "Australia and East Timor shall work expeditiously and in good faith to reach agreement on the manner in which the deposit will be most effectively exploited and on the equitable sharing of the benefits arising from such exploitation".

The Timorese claim they have credible first-hand evidence that Australia bugged their cabinet room during the CMATS negotiations. Their prime witness is a retired ASIS officer who has sworn a detailed affidavit. The Timorese legal team is anxious to maintain the security and the anonymity of their Australian sources. Today at The Hague, the lawyers are to conduct a preliminary directions hearing.

The Timorese legal team thought this would be the appropriate venue to establish a procedure whereby the arbitration could be conducted with access to all relevant evidence without disclosing the identities of any Australian intelligence officers, past or present. David Irvine, who headed ASIS when the bugging is alleged to have occurred, is now the head of ASIO. He and Attorney-General George Brandis had other ideas about how to maintain security. They authorised and conducted raids on the Australian office of the Timor lawyers and on the home of their star witness.

With this arbitration, Timor runs the risk of being perceived as an unreliable sovereign state when it comes to business wanting certainty through secure legal arrangements. Australia risks being perceived as the frontier sheriff on the block doing whatever it takes, including bugging the cabinet rooms of our neighbours, raiding their lawyers' offices, and silencing their witnesses.

For the sake of good neighbourly relations, we need a judicial inquiry as well as a commitment to negotiate maritime boundaries in good faith and in a timely manner.

Father Frank Brennan SJ is professor of law at the Australian Catholic University and author of the Australian Catholic Social Justice Council's papers *The Timor Sea's Oil and Gas: What's Fair* (2004) and *Time to Draw the Line: Finding a Just Settlement between Australia and Timor-Leste* (2013).