

# Did the walls have ears?

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**Image:** Australia has been accused of bugging a meeting room in East Timor. (loveguli/Getty Images)

*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.*

## Transcript

**Hagar Cohen:** Hello, and welcome to *Background Briefing*, I'm Hagar Cohen.

It was late morning, on the 3rd of December when ASIO launched a raid on the Canberra legal office of Bernard Collaery. His assistant, Chloe Preston, was there alone.

**Chloe Preston:** Between 15 and 20 officers around, coming in and out of the house all day. I haven't been in that situation before and it was intimidating to have so many people around the office, not knowing what they were there for, and not being told what they were there for.

**Hagar Cohen:** The agents took paper and digital documents, material that would be used as evidence in a sensational upcoming court case. It involves allegations that Australia spied on the tiny state of Timor-Leste, or East Timor. It came out after a former spy blew the whistle on the operation, as Lawyer Bernard Collaery told ABC radio's *PM* program.

**Bernard Collaery:** The director general of the Australian Secret Intelligence Service and his deputy instructed a team of ASIS technicians to travel to East Timor in an elaborate plan, using Australian aid programs relating to the renovation and construction of the Cabinet offices in Dili, East Timor, to insert listening devices into the wall, of walls to be constructed under an Australian aid program. So this was a bugging operation on sovereign Timor territory.

**Hagar Cohen:** The alleged spying happened in 2004. Mari Alkatiri's government in Timor-Leste was negotiating a multi billion dollar oil and gas treaty with Australia. Alkatiri's communications officer at the time was Paul Cleary. He remembers the renovation works when the bugs were allegedly installed.

**Paul Cleary:** I remember seeing these Australian contractors, and they all looked like Paul Hogan with their sleeves chopped up and the stubby shorts, putting down carpet and things like that in a country that has the wet season and people walk in mud and there was no vacuum cleaner and all this kind of stuff. I never imagined that this would actually then be used to in fact physically bug the prime minister's office, that really did take my breath away.

**Hagar Cohen:** One room in particular, says Cleary, would be used by the negotiating team.

**Paul Cleary:** Immediately adjacent to the prime minister's office, it was probably about four by four metres, the prime minister's personal meeting room, that was where he would hold his own meetings with ministers, that's where the negotiating team met and that was where we briefed the prime minister on the negotiating strategy and what Timor was pressing for, and just essentially the position that we would be putting.

**Hagar Cohen:** The whistleblower's affidavit alleging the bugging and other evidence was seized when ASIO swooped last December. The next day, the Attorney General confirmed the raids in the Senate.

**George Brandis:** Yesterday, search warrants were executed at premises in Canberra by officers of the Australian Security Intelligence Organisation. The premises were those of Mr Bernard Collaery and of a former ASIS officer.

**Hagar Cohen:** The former ASIS officer also had his passport seized. It stopped him from going to the international Court of Arbitration in The Hague to testify about the spying. That hearing was due to start two days later.

Lawyer Bernard Collaery questioned the timing of the ASIO raid and accused the Attorney General of sabotaging Timor-Leste's case. In the Senate, Mr Brandis said that wasn't true.

**George Brandis:** Last night rather wild and injudicious claims were made that the purpose for which the search warrants were issued was to somehow impede or subvert the arbitration. Those claims are wrong. The search warrants were issued, on the advice and at the request of ASIO, to protect Australia's national security.

**Hagar Cohen:** Timor-Leste's lawyers scoffed at this claim. So, they started a second action against Australia, this time at the International Court of Justice.

In court for the East Timorese, international lawyer Sir Elihu Lauterpacht questioned the motive for the raid

**Sir Elihu Lauterpacht:** Is it protecting itself from the likely revelation that Australia's security seriously and illegally entered Timor-Leste under false pretences? Then surreptitiously placed listening devices in the government offices of Timor-Leste, eavesdropped, and extracted information to which they were not entitled?

**Hagar Cohen:** Sir Elihu Lauterpacht argued that the raid was unlawful, and that Australia should return the seized material immediately. Australia disagreed. Its lawyer, Justin Gleeson, said there's a danger that the whistleblower—known here as Mr X—would expose further details, including the identities of other Australian secret agents.

**Justin Gleeson:** Has Mr X disclosed or does he threaten to disclose names or identities of serving or former officers? If he does, will that endanger the lives and security of those persons?

**Hagar Cohen:** The judgement on the validity of the ASIO raids is due to be delivered by May. But the longer proceedings which involve the spying allegations themselves are expected to take many more months at the Court of Arbitration. There, a decision will be made about the future of the oil and gas treaty known as CMATS. This treaty divides royalty revenues from the Greater Sunrise field in the Timor Sea 50/50 between Australia and East Timor. Timor now believes it was tricked into

signing it, and it wants the treaty scrapped. If that happens, Australia would be the first country that's had a treaty ripped up because of fraud.

**Don Anton:** Allegations of fraud are very uncommon. Indeed, no treaty has ever been declared invalid on account of fraud.

**Hagar Cohen:** Associate professor of international law from the ANU, Don Anton.

**Don Anton:** In this case, if the allegations prove true, Australia is in an unenviable and dubious position of being the first state of having a treaty it negotiated declared invalid on account of its fraud.

**Hagar Cohen:** And how likely is that to happen, based on the information that we do know?

**Don Anton:** Well, if the allegations of the deceit, the bugging in order to gain advantage when Australia was already in a supremely superior negotiating position in terms of its knowledge of the law, the diplomacy, the science surrounding that seabed area, if those allegations prove true, and if—and this is a big if—if that deceit was a cause of East Timor entering into the treaty, than it seems pretty clear that article 49 of the Vienna Convention will have the arbitral tribunal declare the treaty invalid.

**Hagar Cohen:** The final treaty, CMATS, signed in 2006, took years of negotiations. Both teams included hard-headed and seasoned negotiators. Australia's was headed by foreign minister Alexander Downer. He refuses to be drawn on Australia's spying operations.

**Alexander Downer:** Obviously I know what they do. There wouldn't be much point in spending any money on them if everything they did was open to public discussion and debate.

**Hagar Cohen:** However, he remembers the negotiations as challenging, particularly because talks started against the backdrop of violence in the lead-up to East Timor's independence.

**Alexander Downer:** A difficult issue because when we came to government, East Timor was part of Indonesia, if not legally, in practice. And there was a lot of violence there. People were dying. East Timor is on our doorstep. And there were human rights issues that arose repeatedly which became problems for Australia, broadly defined, in its relationship with Indonesia.

**Hagar Cohen:** As East Timor was in a UN led transition period, the initial talks on their side were headed by the UN appointed American ambassador Peter Galbraith and Mari Alkatiri. Alkatiri would become independent East Timor's first prime minister. Both remained on the negotiating team right through to 2006 when the final treaty was signed.

Peter Galbraith says he always suspected there was spying, but didn't know the extent of it. He says it would have given Australia a huge advantage.

**Peter Galbraith:** These were in essence negotiations about money, money and the share of oil, and if you know what the Timorese are going to settle for, that's incredibly valuable. But also if you know in advance what negotiating tactics the East Timorese are going to take. Or we had been dealing with Australian negotiators now for a period of five years. I had judgements about how each one of them was going to react, I had judgements about who was more open to our arguments, who had influence with the key decision makers. So again, if the Australian side knows our perceptions of their negotiating team, that is helpful.

And finally, we ended up with quite a large negotiating team, and there were divisions amongst us, and so if the Australians know what those divisions are, they can tailor their positions to the divisions on our side. So in a negotiation to know what the other side is thinking, what its bottom line is, what its negotiating tactics are, what the divisions within its negotiating team are, what the divisions are among the political masters, what instructions are being given, all of that is incredibly useful.

**Hagar Cohen:** To understand the scale of the current dispute over the oil and gas fields, it's important to go back to the history. Australia first signed a treaty with Indonesia in 1989, the Timor Gap Treaty, which was favourable to Australia, but in return it recognised Indonesia's illegal occupation of East Timor.

Upon its independence in 2002, East Timor signed the Timor Sea Treaty and it gave the Timorese 90% of the potential oil and gas revenues. But that share was based on temporary maritime boundaries that keep most of the biggest oil and gas field, Greater Sunrise, on Australia's side. The East Timorese were never happy with this arrangement; they wanted permanent boundaries that more equitably shared the Greater Sunrise territory, which is much closer to the coast of East Timor. But Australia wouldn't budge on the maritime boundaries.

Alexander Downer:

**Alexander Downer:** Look, I'm trying to help explain this to you as best I can. The East Timorese initial position and the UN negotiators on the part of the East Timorese argued that the boundary should be equidistant. We said to the East Timorese and to the UN, well, not only do we disagree with that in law, because we don't think that is a correct interpretation of the international...

**Hagar Cohen:** Then why not let the International Court of Justice resolve..?

**Alexander Downer:** Well, just let me continue...so we said to them, if we make a special dispensation for you in terms of where the maritime boundary is, well, then what are we going to say to other countries? And in particular of course, as I mentioned, Indonesia with whom we have a maritime boundary many thousands of kilometres long. So it had the potential to create a huge diplomatic problem for us.

**Hagar Cohen:** Australia withdrew from two conventions of the International Court of Justice so that it would not be bound by any court decision determining the placement of the maritime boundaries.

Under the current treaty, known as CMATS, Australia agreed to split the revenue share of oil and gas from the Greater Sunrise field 50/50. But they would not agree to a maritime boundary change. A clause in the CMATS Treaty says the current maritime boundaries cannot be renegotiated for 50 years.

Despite the CMATS Treaty being signed eight years ago, nobody has made any money yet from Greater Sunrise. Oil consultant Geoffrey McKee:

**Geoffrey McKee:** All the money people talk about it, it's all in the future. A lot of money has been spent on the field and drilling appraisal wells. And then \$30 million has been spent on engineering studies in order to come up with a development plan, but that was rejected by the Timor-Leste government. So that rejection of the development plan is what ultimately has brought the CMATS treaty unstuck, it's as simple as that.

**Hagar Cohen:** The development plan the Timorese won't agree to involves the Woodside petroleum company installing a floating LNG processing plant. The Timorese insist on a pipeline to take the gas to a processing plant onshore in East Timor.

Geoffrey McKee says he supported this idea for a long time because of the economic benefits for the Timorese, but he has now changed his mind.

**Geoffrey McKee:** Floating LNG, in my opinion as a facilities engineer, solves a lot of environmental problems, it solves decommissioning problems, it solves onshore environmental problems. I've changed my views. I've been a passionate supporter for a pipeline for years, but I have to reluctantly accept that floating LNG is the way of the future.

**Hagar Cohen:** But Geoffrey McKee says Timor-Leste won't budge.

**Geoffrey McKee:** In the minds of the Timor-Leste government, this vision of the pipeline and the desire for foreign direct investment in their country is something that they've set in concrete, they must have it. And I see that their strategy currently is linked to this strong desire for an onshore LNG plant which is linked to their national interest. You know what a country will do when they believe something is in their national interest; they will go to war, won't they. National interest is something that justifies anything.

**Hagar Cohen:** The government of Timor-Leste says it will not be lectured about its vision for an onshore LNG plant. The president of the Council of Ministers, Agio Pereira:

**Agio Pereira:** Timor-Leste is being lectured about the commercial viability, and all the arguments that oppose a pipeline to Timor-Leste have been invalidated. It is now a political decision. Timor-Leste has made it a priority of great importance to its strategic development.

**Hagar Cohen:** The role of Woodside is also central to the current dispute. *Background Briefing* spoke to several members of the East Timorese negotiating team. They all said they believed Woodside and the Australian negotiators were working too closely. Their view was that Canberra was advancing Woodside's interests during the negotiations.

Peter Galbraith:

**Peter Galbraith:** Australia was working with the oil companies to promote the interests of the oil companies, and I suppose also getting some revenues for Australia, but it was a very cosy relationship.

**Hagar Cohen:** Australia's lead negotiator, Alexander Downer, says that kind of relationship is to be expected.

**Alexander Downer:** Look, Woodside is an Australian company, we are on Australia's side. In all negotiations we obviously had discussions with stakeholders. It would be absurd if we didn't have discussions with stakeholders. These are people who have paid good money for leases, they have an interest in the legal and regulatory regime, and obviously Australia would conduct negotiations cognisant of the implications of what they were doing. You'd just be derelict in your duty if you didn't do that.

**Hagar Cohen:** There would be negotiations that are confidential only to the Australian negotiating team and Timor-Leste's negotiating team. I'm asking you if...

**Alexander Downer:** Not necessarily.

**Hagar Cohen:** No?

**Alexander Downer:** Well, I have huge experience of negotiating treaties and agreements internationally. You will typically talk about...you might not talk about the details of the actual meetings you've been having, but it would be understood in such negotiations that both sides would be talking to relevant stakeholders.

**Hagar Cohen:** So you're saying that there were no discussions that were only kept between the Timorese negotiating team and Australia's negotiating team? All the information...

**Alexander Downer:** Ah, I didn't say that. I mean, we would act with discretion in life.

**Hagar Cohen:** The close relationship continues.

During the ongoing impasse with the Timorese, Woodside has hired a number of former Australian government officials. For example Woodside's two most recent representatives in Dili, Brendan Augustin and John Prowse, are formerly of the Department of Foreign Affairs and Trade.

In 2011, Woodside hired Alexander Downer for a short time. According to media reports, the former ASIS agent who blew the whistle about the spying operation did so when he learned about Mr Downer's work with Woodside.

Alexander Downer:

**Alexander Downer:** I just think it's pathetic.

**Hagar Cohen:** Why is that?

**Alexander Downer:** Well, I became a lobbyist for Woodside. I did one job for Woodside over a period of...I've forgotten now, but three or four months, and that is all. Many years after I'd finished as the foreign minister, I finished as the foreign minister at the end of 2007, and I suppose this would have been around four years later. And I did one job for them, which was not to lobby anybody. I didn't lobby anyone, so to say I was a lobbyist is not right. But they asked for my advice, I was happy to give them my advice, and I did and I had some meetings with them and discussed the issues they wanted to discuss. But I'm not entirely sure what it has to do in the sense with the negotiation of the CMATS treaty because this was years after those negotiations have been concluded and the treaty had been ratified.

**Hagar Cohen:** Ambassador Peter Galbraith, who was a lead negotiator on the East Timorese side, has been a vocal critic of Alexander Downer. But he doesn't see Downer's subsequent work with Woodside as a problem.

**Peter Galbraith:** Let me begin by saying that I'm no fan of Alexander Downer. And in the first phase of these negotiations, which Mari Alkatiri and I led before East Timor became independent in 2000 and 2001, Woodside and Phillips Petroleum had enormous influence, I thought utterly inappropriate influence. The oil companies, they weren't at the table but they were deeply involved in the process. But it has been many years since Alexander Downer was involved in that, so I'm not sure that I see a connection between his involvement as foreign minister and his service as a consultant to Woodside.

**Hagar Cohen:** He says the most obvious example of the oil companies' influence over negotiations that he can remember was in 2001.

**Peter Galbraith:** We had reached an agreement in principle which in fact was something that was basically very similar to what emerged in July 2001 as the Timor Sea agreement. And we had agreed to resume negotiations in January. However, this agreement was then taken to the oil companies, the oil companies objected, Australia then did not resume the negotiations until April. It required East Timor and me as a cabinet minister going to Hobart and speaking to the Australian Petroleum Association and saying explicitly that the Timor Sea would be closed to business unless there was a treaty and that the investments were at risk. That finally got attention, and considering the choice between not being able to realise on their investments versus a treaty that they thought was less attractive, the oil companies backed down.

**Hagar Cohen:** The oil companies backed down, but not without a fight. Ambassador Peter Galbraith says Phillips Petroleum, now known as ConocoPhillips, tried to have him removed as a negotiator.

**Peter Galbraith:** So Phillips Petroleum realised its investment was at risk. Its initial reaction was to try to get me removed. The Australians co-operated and they went to the UN, and they also went to the Bush administration, I think to Vice President Cheney, to try to get me removed on the American side. And when that didn't work, then they realised they were probably better off with the treaty than with nothing at all.

**Hagar Cohen:** During the negotiations over the third and final CMATS treaty, Woodside was the main stakeholder. But while Woodside may have a good handle on Australia's politics, it hasn't got the politics right in East Timor, says oil consultant Geoff McKee.

**Geoffrey McKee:** Sunrise is a perfect example of that where they can get everything right except for the politics. They probably feel by having ex-DFAT people on their staff they can learn from DFAT how to do the politics. However, I think they would be smart to put somebody like Ramos-Horta on their board, and then they would get a different input on the politics. Anything is possible. Politics is the art of the possible.

**Hagar Cohen:** Someone like Ramos-Horta or anyone else from the Timorese negotiating team?

**Geoffrey McKee:** Yes. I mean, if it's good enough for Woodside to recruit DFAT people from Australia and put them on the staff, why don't they put a representative from Timor-Leste on their board?

**Hagar Cohen:** *Background Briefing* understands that the legal firm of a former cabinet minister in the Alkatiri government who was a senior negotiator, now has Woodside Petroleum as a client.

The law firm, Da Silva Teixeira Associates, wouldn't confirm whether Woodside is a client, and Jose Teixeira declined *Background Briefing's* requests for an interview.

The current government of East Timor says it has no concerns. President of the Council of Ministers, Agio Pereira:

**Agio Pereira:** He has a legal firm, it's obviously of a commercial nature. I guess he has the right to have his own choices as to who his clients should be, and we don't have any comment about that.

**Hagar Cohen:** Woodside Petroleum also declined *Background Briefing's* request for an interview.

The company's standoff with the current Timorese administration has been further complicated. Discussions over the development of Greater Sunrise have almost stopped as the country pursues the spying case in The Hague.

Timor-Leste believes its evidence is watertight. As lawyer Bernard Collaery told the *Lateline* program, their key witness was a senior figure in the Australian Secret Intelligence Service.

**Bernard Collaery:** This witness was the director of all technical operations of ASIS. We're not talking about some disaffected spy, we're talking about a very senior, experienced, decorated officer who formed a proper view, as would any good person, that this was a wrong operation.

**Hagar Cohen:** Ambassador Peter Galbraith says it's always necessary to take precautions about bugging, and at the time he warned his team of the risk.

**Peter Galbraith:** I assumed that all electronic communications were being monitored. After all, East Timor had no system for encrypting email. The cell phone system had been from Telstra, and even though it switched over to a Portuguese system, I assumed it was very easy to intercept cell phones, and I knew you could monitor cell phones even if you weren't speaking on them, they could be used as a device to pick up conversations. So whenever we discussed really sensitive matters, I would insist not only that all cell phones be turned off but that the cell phones not be in the room where the discussions took place.

**Hagar Cohen:** So to what was the threat of being spied on during that time played high in your mind?

**Peter Galbraith:** It really played high in terms of the discussions that I had as the chief negotiator for East Timor, in terms of determining what our bottom line is.

**Hagar Cohen:** But it was the way the bugging was set up that surprised Peter Galbraith.

**Peter Galbraith:** Well, I was surprised that Australia would bug the offices of the prime minister. It's a bit reminiscent of what went on in the Cold War period.

**Hagar Cohen:** Is there any doubt in your mind that this kind of information would have been used by Australia for commercial purposes rather than for national security purposes?

**Peter Galbraith:** There was no national security interest in these negotiations. It was strictly a commercial negotiation about how the oil in the Timor Sea would be shared, it is about who gets the resources. Nobody is erecting a fortification at the bottom of the Timor Sea

**Hagar Cohen:** As an American diplomat, Galbraith says he knows he can't claim the moral high-ground.

**Peter Galbraith:** I think it's a little hard for me as an American diplomat knowing what has been very helpful in negotiations that I participate in to say that it is completely unethical. Countries that can spy, do spy. And one thing about spying that the United States has discovered in the Snowden affair, which Australia is discovering in this affair, is that you really can't be caught doing it, because if you're caught doing it then your advantage disappears.

**Hagar Cohen:** Again, Australian governments past and present will not comment on spying activities.

Have Australian agents installed bugs inside a Timorese Cabinet room in 2004?

**Alexander Downer:** Well, obviously you know we never answer questions like that.

**Hagar Cohen:** The current attorney general made a statement to Senate already confirming that indeed an ASIS agent is involved as a whistleblower, and that documents were seized during a raid and that they contained information about ASIS activity. So in a sense it has been confirmed. The question is...

**Alexander Downer:** Well, no, that's not true. But in any case obviously what the attorney general says is a matter for him. My point is an entirely different point but of course it hangs off all of this. The East Timorese signed this agreement and it was ratified by both sides, so we have an agreement, and now they've come along to us and said, well, you know, for whatever reason they can put forward any range of different proposals, they want to tear up that agreement. It creates a huge problem. It means in future if you negotiate an agreement with East Timor, are you sure, having signed that agreement, that that's the end of it?

**Hagar Cohen:** Is it appropriate, in your view, to bug confidential discussions of the other side during negotiations?

**Alexander Downer:** You're trying to be, if I may say so with the greatest of respect and I wouldn't have said this when I was the foreign minister, you're trying to be a smart arse. And you can ask the question 10,000 ways, but having been the foreign minister of Australia for 12 years I'm going to maintain the position that all former ministers involved in those sorts of areas have maintained and I'm not going to go any of these intelligence issues.

**Hagar Cohen:** I want to ask you about what is already public and whether you think that the allegations may affect your legacy as Australia's foreign minister during that time?

**Alexander Downer:** I don't think I mind about my legacy, I just mind about doing the right thing. We negotiated an agreement with that country, and we expect them to...I would expect them just to adhere to the terms of the treaty.

**Hagar Cohen:** Alexander Downer.

It wasn't only government officials who were suspicious about bugging. The Timor Sea Justice Campaign was set up in 2004 to protest against Australia's position on the maritime boundaries. To maximise media coverage of their campaign, they decided to hold a rally as CMATS treaty talks were held in Canberra.

Tom Clark was the co-ordinator of the Timor Sea Justice Campaign.

**Tom Clark:** We were trying to decide on where that protest should take place. DFAT weren't very forthcoming in informing us of where it would be held. So yes, I think I tried my luck with someone



at the Timor Sea office. They felt they couldn't really provide us with any information, which I understand and appreciate. But I think during a particular phone call I said, look, this is what we're planning to do, we've looked on the internet as to what the various DFAT locations might be, we've taken a guess that it could be this particular one, so we'll hold a protest at that particular site.

**Hagar Cohen:** Tom Clark was talking to Paul Cleary from the Timor Sea office. Cleary was Mari Alkatiri's communications advisor, and he says the content of this phone conversation with Tom Clark was raised in a meeting with the Australian negotiators.

**Paul Cleary:** They seemed to have pretty good knowledge of what the Timor Sea office was saying to support groups in Australia. There was a group called the Timor Sea Justice Campaign, and they seemed to have a very good close understanding of just exactly the liaison that was going there. One time they got very concerned about the extent to which we were briefing them, and the Timor government was obviously entitled to do that, and that again seemed to me to be based on some sort of monitoring of telephones or internet.

**Hagar Cohen:** Tom Clark also became suspicious that his phone was bugged, particularly when it started playing up.

**Tom Clark:** In hindsight those three months where the campaign was very active, my phone did do a lot of very unusual things that it had never done before and never did again, making unusual noises. In particular there was this strange glitch. I would get a message on my mobile phone and when I'd access my message bank it would actually just play a recording of previous phone conversations I had had, which is very unusual, and it did make me think, oh, I wonder what's going on here.

**Hagar Cohen:** Did you ever manage to get to the bottom of it?

**Tom Clark:** No, it remains a mystery.

**Hagar Cohen:** In this murky environment, there was speculation over whether a member of the East Timorese negotiating team was compromised. Paul Cleary again:

**Paul Cleary:** There's very strong circumstantial evidence I think that one member of the team was compromised. He was a very strong outspoken advocate for the Timorese, suddenly began urging the government of Timor to capitulate and to accept this quite miserable offer that was being made by Australia to settle the dispute. And people in the room I remember were just flabbergasted by this, and they just thought something really strange is going on.

**Hagar Cohen:** But is that your view or other people's views as well...

**Paul Cleary:** Other people as well, yes.

**Hagar Cohen:** ...or do you actually have concrete evidence to suggest that?

**Paul Cleary:** There is no concrete evidence. I haven't got the person's bank statement showing that the money was transferred into his account, but clearly I think it's the case that there is a pretty strong circumstantial evidence that one member of the team was compromised.

**Hagar Cohen:** And did you ever confront that person?

**Paul Cleary:** No, I didn't.

**Hagar Cohen:** Did anyone?

**Paul Cleary:** At the time, people were pretty gob-smacked by this person's behaviour, and I guess the strategy that was taken was...confronting them would have probably meant them no longer being on the negotiating team, and I remember the prime minister's view (and he knew about it) was that it's better to keep your enemies very close to you.

**Hagar Cohen:** Paul Cleary wouldn't name the person. And *Background Briefing* contacted several other former members of the Timor Sea office, who wouldn't talk about any aspect of the negotiations.

Peter Galbraith says it wasn't him, and it's not suggested otherwise. But he was the only other member of the team who was prepared to talk about the allegation, which he says he doesn't believe.

**Peter Galbraith:** There are two ways in which one could be compromised. One is that somebody could be relaying information to the Australians, and in a large delegation that frankly included a number of Australian nationals, that was always at risk. So the most sensitive part of the negotiations was not shared with all the 19 or so people who had participated at various times in the delegation. Some of it frankly was just between myself and the prime minister.

The second way in which they could be reached, and these are the rumours, is that somehow there could be agents promoting Australia's interests. I don't believe that happened, I didn't see anyone acting that way, and if somebody had acted that way or been promoting Australian interests, they would not have been somebody who would have had any influence on the decision.

**Hagar Cohen:** ASIS never approached you with a request?

**Peter Galbraith:** Nobody. Certainly not.

**Hagar Cohen:** Ambassador Peter Galbraith.

As the politics and the legal argy-bargy continue, the Timorese people have been left behind. Timor-Leste has one of the highest poverty rates in the world, and it's getting worse says Charles Scheiner from the Dili based NGO La'o Hamutuk.

**Charles Scheiner:** What you can see anecdotally just from walking around the country is that poverty has increased, both in the number and the percentage of people living in poverty, it's probably between 50% and 55% now but there is no official data to confirm that, and also the depth of poverty, how much worse they are in terms of being able to provide for their basic needs. So that on some international reports on things like malnutrition, there was a UNICEF report on stunting of five-year-olds, on how many five-year-old children are significantly below the height that they should be for their age, Timor-Leste is among the worst countries in the world. So poverty is not just about money, it's about people's lives.

**Hagar Cohen:** Given the poverty that is so evident in East Timor, the NGO community there has been dismayed at Australia's aggressive negotiating tactics over the share of oil and gas wealth.

James Ensor was Oxfam's director in Dili throughout the years the negotiations were happening.

**James Ensor:** What development agencies were puzzled by at the time was the extent to which the aggressive approach taken by the Australian government seemed to be blind to the fact that unless the Timorese government had access to sufficient financial resources, the potential for Timor to descend into a failed state was very high. Timor was highly dependent on aid funding, its next largest export revenue source apart from oil and gas reserves was a very small coffee industry. So its ability to stand on its own two feet without permanent maritime boundaries that would enable the country to plan its economic base around its oil and gas reserves, the alternatives were almost non-existent. And the prospect of the country descending into a failed state status was a significant risk that development agencies saw over the coming period.

**Hagar Cohen:** Throughout this, Australia has faced a concerted campaign of opposition. Before the 2004 federal election there was even an advertising campaign to try and remove Alexander Downer from his seat of Mayo in South Australia. The sponsor of this advertising campaign, businessman Ian Melrose, told *Background Briefing* he is now considering a second advertising campaign because of the spying scandal.

But while many accuse Australia of not playing fair, Alexander Downer now raises the question of whether the Timorese also spied on Australia.

**Alexander Downer:** Australians aren't surprised that spying happens. People spy on Australia the whole time. Did the East Timorese try to spy on Australia? Well, who would know the answer to that question. Maybe we do know the answer to that question, but we wouldn't ever say.

**Hagar Cohen:** And what is the answer to this question?

**Alexander Downer:** We wouldn't ever say.

**Hagar Cohen:** *Background Briefing* put the suggestion of East Timor spying to Minister Agio Pereira.

**Agio Pereira:** I don't think Timor-Leste resorted to espionage because Timor-Leste endorsed the principle that both countries should work absolutely in good faith to reach an agreement.

**Hagar Cohen:** Can you tell me unequivocally that it did not happen, that Timor did not spy on Australia during that time?

**Agio Pereira:** I don't think I want to entertain Mr Downer's curiosity, to be honest.

**Hagar Cohen:** *Background Briefing's* coordinating producer is Linda McGinness, research by Anna Whitfeld, technical production this week by Louis Mitchell, the executive producer is Chris Bullock, and I'm Hagar Cohen.

## Publications

*SHAKEDOWN: Australia's grab for Timor oil* by Paul Cleary, published by Allen & Unwin 2007

## Further Information

- [Lawyer representing E Timor alleges ASIO agents raided his practice, PM ABC RADIO NATIONAL](http://www.abc.net.au/pm/content/2013/s3904298.htm)  
<http://www.abc.net.au/pm/content/2013/s3904298.htm>
- [Fuelling the Future of Timor Leste. A 'middle way' solution, by Geoffrey McKee](http://gamckee.com/wordpress/general/timor-sea/)  
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- [Realism, hard-headedness and the Timor Sea dispute, by Dr. Clinton Fernandes](http://www.scribd.com/doc/201898447/Realism-hard-headedness-and-the-Timor-Sea-dispute-written-in-2005)  
<http://www.scribd.com/doc/201898447/Realism-hard-headedness-and-the-Timor-Sea-dispute-written-in-2005>
- [Attorney General George Brandis statement to Senate about the ASIO raid](http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansards/b37dd255-c7fa-4b2d-86de-64ef0517dde9/0047/hansard_frag.pdf;fileType=application%2Fpdf)  
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- [Background information on CMATS, La'o Hamutuk](http://www.laohamutuk.org/Oil/Boundary/CMATSindex.htm)  
<http://www.laohamutuk.org/Oil/Boundary/CMATSindex.htm>
- [Chronology of Timor Sea negotiations, La'o Hamutuk](http://www.laohamutuk.org/Bulletin/2006/Apr/bulletinv7n1.html)  
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