



OIL AND WATER

Australia blurs the lines with Timor-Leste

BY MARK AARONS

My latest journey to Timor-Leste (East Timor) began on 16 October, the 40th anniversary of the murder of five Australian-based journalists in Balibo by Indonesian special forces. My first trip there was in March 1975, six months prior to their deaths. I was reporting for Radio National's *Lateline* program on an upsurge of nationalist awareness in what had been, until recently, a politically backward Portuguese colony.

This time I made a pilgrimage to the house where the Balibo Five had spent their last hours, laying flowers in their honour. I had returned to Timor-Leste to mark another anniversary, however. On 28 October 1990, Radio National's *Background Briefing* broadcast the first ever interview with the commander of the guerrilla force resisting Indonesia's illegal occupation. Since December 1975 no foreigner had made contact with Xanana Gusmão, the charismatic "father of independence" who became Timor-Leste's first president and later its prime minister. The questions he answered in 1990 were largely mine, but the man who conducted the interview was Robert Domm.

Domm had extensive experience of the country, having first visited as a merchant seaman in the early 1970s. After the Indonesian invasion, he had kept a close eye on developments and, in early 1989, when Jakarta finally opened the borders to permit access for foreigners, Domm was the first visitor under the new rules. The "open door" policy was supposed to demonstrate that everything was normal and the Timorese had accepted Indonesian rule, but it provided a crack through which we hoped to expose the truth.

In mid 1990 I talked to José Ramos-Horta, an old friend whom I first met in 1975. He was the resistance's key diplomatic voice, keeping his nation's cause alive on the international stage. (He, too, later became the nation's prime minister and then president.) I wanted to find out about smuggling someone into the rugged mountains from where Gusmão directed military and political activities. After a month the answer came back: Gusmão was keen to seize the opportunity to have his voice heard by the outside world.

I needed a level-headed volunteer to undertake the mission as I was well known to Indonesian authorities. So I approached Domm, asking him to do the job as a freelance reporter. Even

in consideration of the murder of the Balibo Five and Australian journalist Roger East, he accepted the challenge.

The local civilian resistance, which operated in defiance of Indonesia's oppressive rule and massive, well-trained army, organised the initial phases of our operation. Several hundred civilians were involved, including students in Surabaya and Bali as well as villagers who lived close to Gusmão's jungle hideout in the Ainaro district south of the capital, Dili. The civilian resistance transported Domm in a four-wheel-drive over Timor-Leste's bone-crunching roads that wind up steep mountain passes, then took him on the first stage of his arduous and dangerous trek, delivering him into the hands of a seven-man guerrilla detachment. These hardened fighters smuggled him past thousands of Indonesian soldiers and up a sheer mountain to Gusmão's warm handshake.

When broadcast in late October 1990, the interview went what we now call "viral". It helped transform Gusmão from a will-o'-the-wisp figure commanding a small guerrilla force into a substantial figure on the international stage. It was an important step in debunking Jakarta's propaganda. The price the resistance paid for the interview was horrific. In the aftermath, the humiliated Indonesians launched a massive military offensive, killing a number of the guerrillas. Gusmão barely escaped with his life.

By contrast, the 2015 re-enactment of the 1990 *Background Briefing* interview was a joyous celebration. Gone was the atmosphere of repression, and the smell of death. Hundreds of local villagers proudly sang the national anthem and cheered Gusmão's speeches. This time I joined Domm in the trek up the mountain. Nothing could have prepared me for that challenge.

I'm in my mid 60s, reasonably fit, and regularly take long bushwalks up steep national park tracks. Nevertheless I would not have made it to Gusmão's reconstructed jungle headquarters without the assistance of two of his veteran guerrillas - one pushing from behind, the other pulling from in front. With each footstep I was in danger of sliding back down the slope. The veterans - tough, strong and wiry - had spent many years in these mountains fighting the Indonesian army. Now they were saving me from injury or even death.

After wearily climbing the final steps I looked up and saw Gusmão. He offered me his hand, helping me up as though I were a sparrow.

Having stepped down as prime minister last February, handing the reins to Rui Maria de Araújo of the opposition Fretilin party, Gusmão says he still wants to rebuild national unity after traumatic divisions, and institute generational change.

This time I conducted the interview in person, filmed by ABC TV's *Lateline* while Domm listened. When asked later

what his impression was of Domm, Gusmão replied emotionally. "I knew he was a man of commitment. To come to us in our remote mountain camp, as a white man, was extremely dangerous. I thought he was supremely courageous. He travelled country peopled by Indonesian soldiers."

Gusmão also stressed the significance of the 1990 interview. "It was extremely important in two key ways. First, it took our voice to the world, but it was also important for our morale," he said. "It gave us even more determination to resist, a preparedness to die in the belief of ultimate victory."

And die they did. Before hiking up the mountain I had visited the memorial to the fallen guerrillas of the Ainaro district. In a beautifully constructed building are the remains of more than 2500 heroes of the struggle, collected by their comrades from where they had fallen, identified by name, date of birth and death, and placed in simple wooden coffins. The number of women among the deceased is striking. Each coffin is draped with the national flag, and photos adorn most of them. In time they will be buried in a memorial park. These fighters came from only one of many regions where the war raged for 24 years. During the occupation, almost 200,000 Timorese, or almost one third of the 1975 population, died as a direct result of Indonesian operations.

The worst period of mass killings occurred before the country was opened to foreign visitors in 1989. Domm's 1990 interview with Gusmão revealed the truth that Australian intelligence had long known, and which the government had covered up. So it was hardly surprising that Gusmão reserved his most trenchant criticism of the international community's policies for successive Australian governments.

"Australia has been an accomplice in the genocide perpetrated by the occupation forces," he calmly told Domm, "because the interests which Australia wanted to secure with the annexation of East Timor to Indonesia are so evident." Gusmão was referring to the Timor Gap Treaty, which the then Australian foreign minister, Gareth Evans, signed in December 1989 with his Indonesian counterpart, Ali Alatas. The treaty meant the two nations agreed to jointly exploit Timor-Leste's rich oil and gas resources and share the profits, with Australia allocated the lion's share of the biggest prize, the Greater Sunrise oil and gas field.

Despite his remote location Gusmão was well informed, explaining to Domm that "it's an illegal decision, illegitimate and criminal, in the context that we're being exterminated by a party to this agreement. Australia, with this treaty, becomes an accomplice. It's inconceivable that a democratic country with a Western way of life, a country which claims to be a defender of human rights, should profit from our blood." In order to finalise this agreement, Australia became the sole nation to extend de jure recognition to the incorporation of Timor-Leste into Indonesia.

Australia's greed for Timor-Leste's resources dates to 1963, when it issued an exploration licence for Greater Sunrise to Australian oil and gas company Woodside Petroleum. After the events of 1965-66, in which the Indonesian army and its civilian collaborators massacred up to a million Indonesian communists and leftists,

GUSMÃO BELIEVES THAT AUSTRALIA'S GRAB FOR THE OIL AND GAS INVOLVED ILLEGALITY, AND HE WANTS AN APOLOGY

negotiations were launched to draw the maritime boundary between Indonesian West Timor and Australia. In 1972, in recognition of Australia's support for his regime, President Suharto agreed to a preposterously generous boundary, drawn almost at the edge of what Australia claims as its continental shelf, close to West Timor's southern coastline.

This agreement, however, left a "gap" over the area closest to East Timor, which the Portuguese still controlled. Lisbon wanted a median line drawn between East Timor and Australia, in accordance with international law. Hence the "Timor Gap" in Australia's northern maritime boundary was born. Today, it is an independent Timor-Leste that demands the same placement of the boundary as the Portuguese did, which would make the oil and gas reserves of Greater Sunrise exclusively Timor-Leste's.

Australia knew all along that most of the oil and gas resources are located in the gap south of Timor-Leste. As isolated as he was in 1990, Gusmão understood that Evans' Timor Gap Treaty was designed to share the spoils with Indonesia. This desire had been spelt out in a cable dispatched to Canberra by Richard Woolcott, then Australia's ambassador in Jakarta. Written in August 1975 on the eve of the Indonesian invasion, it revealed the length to which Australia was prepared to go to steal Timor-Leste's oil and gas.

"I wonder whether the Department [of foreign affairs] has ascertained the interest of the Minister or the Department of Minerals and Energy," Woolcott mused, as "this Department might well have an interest in closing the present gap in the agreed seabed border and this could be much more readily negotiated with Indonesia ... than with Portugal or independent Portuguese Timor." With no hint of shame Woolcott concluded, "I know I am recommending a pragmatic rather than a principled stand, but that is what national interest and foreign policy is all about."

Fifteen years later Gusmão condemned such pragmatism, telling Domm, "We feel betrayed that a country with Western values should profit from our peoples' blood by participating in this rapacious exploitation of something that is in fact legitimately ours."

Now, 25 years on, Gusmão's conclusion about current Australian policies towards Timor-Leste's natural resources is hardly kinder. Indeed, he views successive Australian governments as continuing to connive to steal his country's natural resources. "For us, our nation cannot achieve its full sovereignty until our maritime boundary with Australia is

finalised," he argues. "Australia has consistently refused to negotiate maritime boundaries with us, yet has done so with all neighbours that it shares maritime boundaries with. Why not us, we wonder? Australia's grab for our oil and gas in earlier times, and its insistence on clinging to past actions, involved illegal actions. We feel Australia should apologise and the best apology would be to put the past right, and agree to sit at the table with us and negotiate our maritime boundaries."

The August 1999 referendum, in which the Timorese voted for independence, caused a significant headache for Australia. Evans' 1989 deal with Jakarta was now worthless unless Canberra played hardball with the soon-to-be independent nation. Even as the Australian government led the international force that returned the new nation to a kind of peace, it kept a close eye on Timor-Leste's natural resources. How would Australia keep its ill-gotten share?

Negotiations commenced while East Timor was under UN transitional administration. Australia pressed for a memorandum of understanding to allow continued exploitation of natural resources in the Timor Sea, but in a smaller area than that covered by the Timor Gap Treaty. Australia then pressured Timor-Leste to facilitate operations in the Bayu-Undan field, which was ready for exploitation. Timor-Leste agreed in order to get urgently needed oil and gas money flowing, so it could commence rebuilding. The Timor Sea Treaty was signed on 20 May 2002, the first day of independence. The Bayu-Undan operation, even though it is much closer to Timor-Leste's coast, included plans for a pipeline to Darwin, generating considerable revenue for Australia.

Australia's hardball tactics continued after independence. The Timorese were ill-prepared for such negotiations, lacking in institutional and legal expertise, and reliant on hastily acquired outside advice. Despite these disadvantages, Timor-Leste signed the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) in early 2006, covering the much more lucrative Greater Sunrise field. At that time, Timor-Leste believed that the pipeline for this

operation would be built to its shores, creating desperately needed jobs for locals.

Australia had first proposed that the terms of Evans' deal should remain in place, with Timor-Leste receiving Indonesia's "share" and Australia the remainder. Under direction of the then foreign minister Alexander Downer, Australia's negotiators cited the precedent of its favourable 1972 Indonesia agreement to adopt the continental shelf as the maritime boundary.

Timor-Leste rejected this claim, proposing instead a final delineation of the maritime boundary. Australia pointedly stymied this, instead incrementally conceding ever larger proportions of the resources until it agreed to take "only" a 10% share under the 2002 Timor Sea Treaty (covering Bayu-Undan) and 50% under CMATS (covering Greater Sunrise, conservatively estimated to be worth around \$40 billion), while proclaiming its "generosity" in making such "concessions". As Gusmão wryly comments, "We must be the poorest donor nation giving generously to Australia."

The catch in achieving these so-called concessions was Australia's insistence on a 50-year (legally unenforceable) moratorium regarding maritime boundaries, during which Timor-Leste's natural resources would be fully exploited. The other catch was that in March 2002, on the eve of independence, Australia had withdrawn from the jurisdiction

of the International Court of Justice, so it would no longer have to accept its decisions on settling maritime boundary disputes. Consequently Timor-Leste was deprived of any judicial forum in which to pursue finalisation of the maritime boundary. This must have been especially galling when Timor-Leste realised Australia had used underhanded means during negotiations for the CMATS treaty.

Downer is proud of CMATS. In March 2014 he told *Four Corners* that he had consulted closely with Woodside. "The Australian government unashamedly should be trying to advance the interests of Australian companies," he said. "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."

Downer left government following the 2007 federal election, then became a lobbyist for Woodside. In May 2011 he turned up in Dili representing Woodside, asking for a meeting with Gusmão, who at that time was prime minister. Downer delivered a message from Woodside that the company would provide considerable development money if Gusmão dropped his campaign for a pipeline to take the gas to Timor-Leste. Gusmão flatly rejected this.



When he met Downer in 2011, Gusmão did not know that his country's negotiating team had been bugged by Australia in 2004 during the CMATS negotiations. In late 2012 he obtained firm evidence. Gusmão would not reveal exactly how he found out, but he did not need WikiLeaks' help. As he explained for this essay, Timor-Leste's positions on key questions, their weaknesses on crucial points, their ignorance of international legal issues and even their bottom-line negotiating positions were all known in advance. "We were very disappointed."

Downer was the authorising minister for the Australian Secret Intelligence Service (ASIS), the agency that bugged Timor-Leste's cabinet room in Dili and tapped its telephones. The long-serving career ASIS officer who carried out the operation - known as "Witness K" - faces possible prosecution for disclosing the use of an aid team - tasked with renovating the cabinet room - to install the bugs.

Gusmão knew Australia had bugged Timor-Leste's

cabinet room, but instead of kicking up a public storm he quietly spoke to the then prime minister, Julia Gillard, alerting her to the problem. In December 2012 he followed up with a letter to Gillard, but to his surprise, she sent an envoy: Margaret Twomey, Australia's ambassador to Dili when the CMATS negotiations were under way.

When Gusmão's claims were rebuffed, leaving no further avenue for fruitful discussions, Timor-Leste opted for its only remaining legal recourse. In April 2013, Australia was formally notified that Timor-Leste was utilising the provisions of the May 2002 Timor Sea Treaty, and taking its case to the Permanent Court of Arbitration in The Hague. Dili asserted that CMATS is invalid because Australia had conducted espionage to Timor-Leste's disadvantage, and had not negotiated in good faith.

In 2014, Downer told *Four Corners* that "the Australian government was on Australia's side in the negotiations and we did our best to make sure that we were able to achieve



our objective". Gusmão cannot "comprehend" that the ASIS operation "was for legitimate intelligence gathering ... it gave commercial and economic advantage to the Australian government". Greater Sunrise remains stalled.

In December 2013, Attorney-general George Brandis authorised raids on Timor-Leste's Canberra-based legal adviser Bernard Collaery, as well as Witness K, whose passport was seized. Legal files connected with Timor-Leste's arbitration case were also seized. Timor-Leste, demanding their return, applied to the International Court of Justice in The Hague. The files were unconditionally returned last May and Brandis provided the following undertaking: "Australia recognises the need for all States to respect the confidentiality of communications between States and their legal advisers consistent with the widely accepted principle of legal professional privilege."

Gusmão remains unconvinced of Australia's sincerity.

When asked if he was confident that Australia has ceased its spying on Timor-Leste, he responded, "Well, it is a hard question, but given what is going on between us, despite the strong links and people-to-people friendships, it may well continue. We hope Australia is now better than that." In a further show of good faith, Timor-Leste did, however, agree to Australia's request to suspend the arbitration to see if an amicable agreement could be reached. It could not, with Australia yet again refusing to enter into negotiations to settle permanent maritime boundaries. It is little wonder that Gusmão is determined to pursue the case to invalidate CMATS.

Timor-Leste's case relies on Witness K, whose affidavit has already been lodged with the Permanent Court of Arbitration. Gusmão offered a simple assessment of the witness' motives: "From what we can deduce, Witness K wanted to tell the truth of what was done to us." But without a passport this crucial witness may be prevented from telling the court what he knows in person.

The Australian government's intransigence continues, as does its approach to the issue of where the maritime boundary should be drawn. Foreign minister Julie Bishop recently complained that coverage of the issue in *The Saturday Paper* might leave readers "with the impression that Australia's Timor Sea policies are inconsistent with international law and unfair to Timor-Leste. This is not the case." Bishop also claimed that drawing the maritime boundary at the median point would generate less revenue for Timor-Leste from Greater Sunrise.

In fact, Greater Sunrise is considerably north of the legally appropriate median line. But if Bishop is so confident of Australia's legal position she has an easy option to test it: restore the jurisdiction of the International Court of Justice to settle the dispute. After all, Australia's maritime boundaries have been finalised bar one: that with Timor-Leste.

As Gusmão cynically observes, "for less than 2% of Australia's maritime boundary, the unmarked part with us, the jurisdiction of the International Court of Justice and the International Tribunal of the Law of the Sea is not recognised by Australia". The poverty I witnessed in the Ainaro district is a stark reminder of what is at stake in Timor-Leste's quest to win sovereignty over its natural resources.

If Bishop's version of the applicable international law is correct, she could rightly point out that it is on Gusmão's head that his nation will forgo revenue being granted by a magnanimous Australia.

If she is wrong, however, then successive Australian governments - stretching back to the 1960s - would be exposed for conspiring to steal Timor-Leste's natural wealth, just as Gusmão has claimed since Robert Domm made his historic trek to give him a voice on the international stage 25 years ago. **M**