

The secretive Bernard Collaery saga closed as Australia eyes China's regional rise

By defence correspondent Andrew Greene, ABC News Analysis, 9 July 2022

Late in 2013, Federal Police and ASIO officers swooped on the Canberra home and office of prominent local lawyer Bernard Collaery, seizing numerous sensitive legal documents.

"This is an attempt to intimidate our witness and to prevent the evidence going forward at the Hague," a clearly shaken Collaery told the ABC's Lateline program from Europe on December 3.

The dramatic scenes had unfolded as the former ACT Attorney-General was in the Netherlands, preparing to present damning evidence to the International Court of Arbitration about an alleged Australian espionage operation against the fledgling and impoverished nation of Timor-Leste.

Suddenly a long-running and secretive intelligence saga was out in the open, but the genesis of this international scandal stretches back a decade earlier, with the appointment of career diplomat David Irvine as boss of the Australian Secret Intelligence Service (ASIS).

This week Collaery's prosecution has finally come to an end — but the saga's impact on whistleblowers, security officials, and foreign relations will remain for years to come.

How it all began

Irvine, who died earlier this year, began his term as ASIS Director General in March 2003 following a three-year posting as ambassador to Beijing, where he'd overseen a large gas export deal between Australia and China.

A year later the ASIS boss is believed to have begun planning an elaborate operation to spy on Timorese officials, as they also prepared to negotiate with the Howard government over royalties for lucrative oil and gas reserves in the Timor Sea.

A man known only as "Witness K", then head of ASIS technical operations, was tasked with bugging the cabinet room in Dili, an operation that began in earnest in July 2004 with an Australian government-funded refurbishment of Timor's government offices.



Prime Minister John Howard and his Timorese counterpart Mari Alkatiri after signing the Treaty on Certain Maritime Arrangements in 2006. (AAP: Mick Tsikas)

In January 2006 then Prime Minister John Howard and his Timorese counterpart Mari Alkatiri eventually signed the Treaty on Certain Maritime Arrangements in the Timor Sea (CMATS) but Australia's clandestine planting of listening devices in Dili remained top secret.

Howard's government lost office in 2007, and by 2008 Witness K had become so disillusioned by what he saw as Australia's illegal tactics during its negotiations with Timor-Leste that he lodged a formal internal complaint through lawyer Bernard Collaery.

The first public acknowledgement by Australia that it stood accused of illegally spying on Timor-Leste came in May 2013 when Foreign Minister Bob Carr and Attorney-General Mark Dreyfus issued a statement noting legal action was underway in the Hague.

"Timor-Leste argues that CMATS is invalid because it alleges Australia did not conduct the CMATS negotiations in 2003 in good faith by engaging in espionage," the Gillard government ministers wrote while declaring that the treaty was "valid and remains in force".

By the time the Coalition returned to power in September 2013, David Irvine had become ASIO boss, and in December that year, the new Attorney-General George Brandis approved the raiding of Collaery and Witness K's properties, throwing the Timor-Leste spy scandal back into the spotlight.

In 2018, Senator Brandis's replacement as attorney-general, Christian Porter, finally authorised the Commonwealth Director of Public Prosecutions to file criminal charges against Collaery and his client Witness K, nearly five years after the raids.

Last year Witness K was [convicted of breaching secrecy laws but was spared jail](#), while his lawyer Collaery was due to stand trial in October and was facing the likely prospect of imprisonment.

What's changed?

Following Labor's election win in May this year, and with Mark Dreyfus again appointed Attorney-General, it was widely expected the Commonwealth would be ordered to drop its prosecution of Bernard Collaery.



Attorney-General Mark Dreyfus discontinued the prosecution of Bernard Collaery this week. (AAP: Mick Tsikas)

Five weeks after being sworn in, [Dreyfus on Thursday confirmed](#) he had "discontinued the prosecution of Mr Bernard Collaery under section 71 of the Judiciary Act 1903".

"My decision was informed by the Government's commitment to Australia's national security and our relations with our neighbours. This is an exceptional case," he told reporters.

The citing of "national security" and "relations with our neighbours" is significant, underlining that the Albanese government takes Timor-Leste's concerns seriously — particularly as China's influence grows in the region.

In recent years China's presence in Timor-Leste, one of the poorest nations in the Asia-Pacific, has steadily risen and just this month Beijing signed agreements on air services, healthcare, economic and technical cooperation.

The case divided officials

If members of Australia's national security community are annoyed at this week's decision to drop the prosecution against Collaery, they're keeping their frustrations private for now.

For years the pursuit of Collaery and Witness K has divided intelligence officials, with some horrified at the treatment of the pair while others were adamant a strong message needed to be sent to those thinking of revealing national secrets.



Shadow Attorney-General Julian Leaser says the decision to end the pursuit of Bernard Collaery "sends a dangerous message". (ABC News: Nick Haggarty)

So far, the only prominent criticism of Dreyfus' decision has come from the new Shadow Attorney-General Julian Leaser, who warned the move sent a "dangerous message".

"Mr Dreyfus must explain why he has chosen to undermine the good work of Australia's national security agencies who work tirelessly to keep Australians safe as his first action as Attorney-General," he said.

"This action sends a dangerous message to those who would seek to do harm to Australia by dealing in government secrets and shows Labor can't be trusted to manage our national security."

Supporters call for change

Supporters of Collaery are relieved the 77-year-old is finally free from the prospect of jail but are now demanding the Attorney-General act to end federal prosecutions of other high-profile whistleblowers.

"We don't presently give sufficient protection to whistleblowers in my view, and they can serve a very valuable purpose for all of us," says Nicholas Cowdery, former NDW Director of Public Prosecutions.

"I think every case needs to be looked at very carefully," he says, "I think that the two cases that remain running [ATO employee Richard Boyle and Defence lawyer David McBride] need to be looked at very carefully as well".

So far Dreyfus doesn't seem inclined to act, stressing that Collaery's was an "exceptional" case.

"Governments must protect secrets, and this government remains steadfast in our commitment to keep Australians safe by keeping secrets out of the wrong hands," he said.



Supporters of lawyer Bernard Collaery and 'Witness K' stage a protest outside the Supreme Court in Canberra in 2019. (AAP: Lukas Coch)