

Australia urged to return \$5bn to Timor-Leste and launch royal commission

Senate inquiry told Australia should also drop prosecution of Witness K and Bernard Collaery

By Helen Davidson and *Ben Doherty*, The Guardian, 18 October 2019

Australia's negotiations with [Timor-Leste](#) should be the subject of a royal commission, and the government should return \$5bn unfairly taken from the impoverished nation, a parliamentary inquiry has been told.

It should also drop the [prosecution of Witness K and Bernard Collaery](#), who revealed the now infamous bugging of Timorese delegates during negotiations on what became the CMATS treaty.

A Senate standing committee is examining decisions made by Australia in 2002, amid fractious maritime border negotiations with Timor-Leste, to withdraw from the jurisdictions of the International Tribunal of the Law of the Sea (ITLOS) and the International Court of Justice (ICJ).

Among the seven published submissions – none of which come from the Australian government – high profile Timorese organisations, allies and academics, supported the return, and called on Australia to be held accountable for its conduct.

Steve Bracks, the former Victorian premier and formal adviser to the Timorese government, said in his submission the conduct of the Department of Foreign Affairs and Trade in its negotiations with Timor-Leste should be examined by a royal commission.

Australia has a long history of [controversial dealings with Timor-Leste](#), including spying on Timorese representatives during treaty negotiations and recent revelations that [successive Australian governments were driven by a desire for resources](#) when legitimising the Indonesian invasion.

When Timor-Leste regained independence, leaving open a border which had previously been subject to a treaty with Indonesia, Australia controversially pushed for the new maritime border which gave it a greater share than Timor-Leste of the lucrative oil and gas fields in the region.

Sixteen years later, in March 2018, [the two countries finally signed a treaty](#) which essentially followed the median line first envisioned as a fair demarcation years earlier.

Bracks said the Australian government – led at the time by John Howard and with Alexander Downer as foreign affairs minister – could have “consolidated Australia’s relationship with a close, strategically placed neighbour”, if it had acknowledged a fair maritime border from the start.

Instead Australia “put short-term economic interests above long-term international gain”.

“During that 16 years, while Timor-Leste was dealing with the aftermath of a brutal 24 year occupation and [struggling to build a new nation](#),” Bracks said. “The oil and gas reserves in the Timor Sea were the only significant revenue source available to them.”

Dili-based human rights and economic analysis group L'ao Hamutuk estimated Australia had taken more than US\$5bn in oil and gas revenue since 2002 from reserves which both countries now acknowledge were always in an independent Timor-Leste's territory.

The figure includes more than US\$105m taken since the 2018 treaty was signed.

“As part of the inherently unbalanced negotiating process that produced it, Timor-Leste's government [agreed not to 'claim for compensation'](#) for money collected by Australia under prior treaties and agreements,” wrote L'ao Hamutuk.

“However, nothing in the Treaty prevents Australia from [voluntarily returning this stolen money.](#)”

Downer's proclamation that the withdrawal from the international bodies was because Australia preferred negotiation over litigation was criticised by several submissions.

“Australia's sudden withdrawal from the maritime jurisdiction of the ICJ and ITLOS in March 2002 is explained by one simple factor: unlike negotiations, litigation involves an independent umpire,” Bracks said.

The [Timor Sea Justice Campaign](#) said: “It is incredibly poor form for the Australian government – currently sitting on the United Nations Human Rights Council – to choose not to play by international rules simply when it does not suit them.

“The Australian government shunned international law and bullied its way into a series of temporary resource sharing arrangements that significantly short-changed Timor-Leste.”

The campaign's spokesman, Tom Clarke, told Guardian Australia it was politically conceivable Australia might resubmit to the authority of the ICJ on maritime matters, which would be welcomed.

“When you look at the timeline of the events, it's hard not to conclude Australia simply withdrew its recognition so that it could rip off East Timor, and now that the job is done, it might again recognise the court's jurisdiction. It's hard not to be cynical that Australia is just picking and choosing when to abide by international law.”

Submissions also called for the government to drop the prosecutions of Witness K and Bernard Collaery.

Bracks and academic Clinton Fernandes noted it occurred around the time that Jemaah Islamiyah terrorists bombed Australia's embassy in Jakarta.

“Surely our Asis resources should have been targeting the 'war on terror', and not facilitating Australia's economic exploitation of a friendly, desperately poor and recently traumatised neighbour?” Bracks said.

Timor-Leste later sought to have the CMATS treaty terminated by the Hague after the bugging operation was revealed in 2013, but Witness K was prevented by Australia from attending the hearing to give evidence, and both he and Collaery have faced charges in extraordinarily controversial circumstances.

Bracks said he had “no doubt” that Xanana Gusmao would not have signed the treaty had he known Witness K and Collaery would be charged soon after.

Submissions to the inquiry have closed, although requests for an extension can be made. A report is expected on 28 November.