



**GOVERNO**  
**REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE**

**APPLICATION OF THE REPÚBLICA DEMOCRÁTICA DE TIMOR-LESTE**  
**INSTITUTING PROCEEDINGS AGAINST THE COMMONWEALTH OF**  
**AUSTRALIA**

17 December 2013

**To the Registrar**  
**International Court of Justice**

The undersigned, being duly authorized by the República Democrática de Timor-Leste and being the Ambassador of the República Democrática de Timor-Leste at London, has the honour to file the following Application::

1. The República Democrática de Timor-Leste ('Timor-Leste') has the honour to submit to the Court, in accordance with Articles 36 and 40 of the Statute of the Court and Article 38 of the Rules of Court, this Application instituting proceedings against the Commonwealth of Australia ('Australia') in respect of the dispute described below.

**I. SUBJECT OF THE DISPUTE**

2. The dispute concerns the seizure on or about 3 December 2013 ('the seizure'), and the subsequent detention ('the detention'), by agents of Australia of documents, data and other property which belongs to Timor-Leste and /or

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which Timor-Leste has the right to protect under international law ('the documents and data'). The documents and data were held at the time of the seizure by legal advisers to Timor-Leste in Australia.

3. Timor-Leste requests that the Court declare that: (1) the seizure by Australia of the documents and data is a violation of the rights of Timor-Leste under international law; (2) the continuing detention by Australia of the documents and data and is a violation of the rights of Timor-Leste under international law; (3) Australia must immediately return the documents and data to the nominated representative of Timor-Leste, and destroy beyond recovery any copies; (4) Timor-Leste is entitled to satisfaction for the violation of its rights under international law in the form of an apology from Australia.

## II. THE FACTS

4. **The seizure.** On 3 December 2013, agents of Australia attended 5 Brockman Street, Narrabundah in the Australian Capital Territory, Australia ('the Property') with, allegedly, a warrant issued pursuant to section 25 of the Australian Security Intelligence Organisation Act 1979 ('the ASIO Act'), to search for and seize documents and other items. The Property is the business premises of a legal adviser to Timor-Leste.
5. The material seized by the agents of Australia includes *inter alia* (i) items held for and/ or on behalf of Timor-Leste, which are the property of Timor-Leste; (ii) documents, data and correspondence between Timor-Leste and its legal advisers (including documents relating to legal advice); (iii) documents prepared solely or predominantly in relation to a legal dispute between Timor-Leste and Australia currently before a Tribunal established under Article 23 of the 2002 Timor Sea Treaty;<sup>1</sup> and other documents and data in which Timor-Leste has a sovereign interest protected by international law.

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<sup>1</sup> *United Nations Treaty Series* No. 40222.

6. The detention. The documents and data taken in the course of the seizure remain under the control of Australia, despite the request made by Timor-Leste on 10 December 2013 for their immediate return.

### III. THE JURISDICTION OF THE COURT

7. The jurisdiction of the Court in this case is based on Article 36(2) of the Statute of the International Court of Justice. Both Timor-Leste and Australia have made declarations under Article 36(2) recognizing the jurisdiction of the Court as compulsory *ipso facto*.
8. No reservation has been made to its declaration under Article 36(2) by Timor-Leste, other than a general reservation to amend or withdraw its declaration at any time.
9. Australia has made three reservations to its declaration under Article 36(2), in addition to a general reservation to withdraw its declaration upon notice given to the Secretary-General of the United Nations. None of the three reservations applies to the present circumstances.

### IV. THE LEGAL GROUNDS FOR TIMOR-LESTE'S REQUEST

10. The main grounds on which Timor-Leste's claim is based are (a) the property and other rights possessed by Timor-Leste in documents and data sent to, or held by, or received from, its legal representatives and legal advisers, whether within or outside the territory of Timor-Leste; (b) the property and other rights possessed by Timor-Leste in relation to documents and data prepared by, or on behalf of, or for the Government of Timor-Leste in the course of the provision of legal advice to the Government of Timor-Leste; (c) the property and other rights possessed by Timor-Leste in relation to documents and data prepared by, or on behalf of, or for the Government of Timor-Leste in the course of preparations for litigation in which Timor-Leste is engaged as a party. Those rights exist under customary international law and any relevant domestic law,

and as a consequence of the sovereignty of Timor-Leste under international law.

## V. DECISION REQUESTED

11. Timor-Leste requests the Court to adjudge and declare:

*FIRST:* That the seizure by Australia of the documents and data violated (i) the sovereignty of Timor-Leste and (ii) its property and other rights under international law and any relevant domestic law;

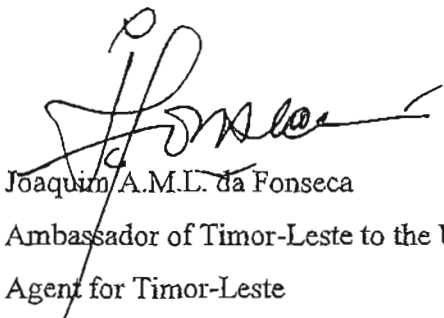
*SECOND:* That continuing detention by Australia of the documents and data violates (i) the sovereignty of Timor-Leste and (ii) its property and other rights under international law and any relevant domestic law;

*THIRD:* That Australia must immediately return to the nominated representative of Timor-Leste any and all of the aforesaid documents and data, and destroy beyond recovery every copy of such documents and data that is in Australia's possession or control, and ensure the destruction of every such copy that Australia has directly or indirectly passed to a third person or third State;

*FOURTH:* That Australia should afford satisfaction to Timor-Leste in respect of the above-mentioned violations of its rights under international law and any relevant domestic law, in the form of a formal apology as well as the costs incurred by Timor-Leste in preparing and presenting the present Application.

12. Timor-Leste reserves the right to amend and/or supplement this Application and its legal basis.
13. Pursuant to Article 31 of the Statute of the Court and Article 35, paragraph 1 of its Rules, the Timor-Leste will in due course exercise the power conferred by Article 31 of the Statute and choose a person to sit as judge *ad hoc* and will so inform the Court.
14. The Government of Timor-Leste has designated the undersigned as its Agent for the purposes of these proceedings. All communications relating to this case should be sent to the Agent at the address below, unless notified otherwise by the Agent.

Respectfully submitted,



Joaquim A.M.L. da Fonseca

Ambassador of Timor-Leste to the UK

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