

# East Timor lawyer in security 'crime'

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**EAST Timor may have encouraged its lawyer to engage in criminal conduct by obtaining security information from a former Australian spy officer, the Australian government's Solicitor-General told the International Court of Justice last night.**

These actions led to a December 3 raid by Australia's domestic spy agency, ASIO, which is now the subject of the case East Timor has brought to the UN court.

"East Timor may be encouraging the commission of that crime," Justin Gleeson SC told the full bench of the UN's highest court yesterday.

"To place classified information in the hands of a foreign state is a serious wrong to Australia."

East Timor is seeking to have the documents seized by ASIO returned to it and a formal apology issued by Australia.

The documents include an affidavit from a former Australian Secret Intelligence Service officer who alleges that Australia bugged the prime minister's office during sensitive negotiations over a 2006 treaty governing oil resources.

In order to assuage East Timor's concerns, Attorney-General George Brandis yesterday made a "new and broader undertaking" to protect the documents seized by ASIO, his department's first assistant secretary John Reid told the court.

The proceedings relate to a bid by East Timor to have the 2006 CMATS oil treaty declared invalid because it alleges that Australia engaged in espionage. This case, before the Permanent Court of Arbitration, is unlikely to be heard for another 12 months.

Mr Gleeson said East Timor's claim over the documents held in another country represented a "new form of extra-territoriality" that would render superfluous a range of international conventions. While Australia's legal counsel had not viewed the documents, statements by government ministers and Timor's Canberra-based legal adviser Bernard Collaery indicated the disclosure may have involved "serious criminal offences".

He noted that East Timor had a prohibition on the disclosure of state secrets that was punishable by 15 years' jail.

The case at The Hague may have appeared to some like a reunion of international law experts, including those associated with Australia's bid to control Timor Sea oil over past decades.

Australia's team of silks included Cambridge University law professor James Crawford SC and Bill Campbell QC, the Attorney-General's Department top adviser on international law.

Professor Campbell advised the Australian government on a related matter in the mid-1990s when Portugal took Australia to the ICJ in an unsuccessful attempt to have the Timor Gap Treaty with Indonesia declared illegal.

Mr Campbell was on Australia's team a decade ago when the two countries negotiated the treaty at the centre of allegations that Australia physically bugged the East Timor prime minister's office.

East Timor was represented before the full bench of the Court by Elihu Lauterpacht, an octogenarian professor who advised Australia in the mid-70s when it brought an action against French nuclear testing in the Pacific at the very same court.

In presenting East Timor's case for a provisional order on Monday, Sir Elihu declared that Australia had engaged in theft and should return the documents.

"One state has taken the property of another and should be required to give it back -- untouched and without delay," he told the court.

Former High Court judge Ian Callinan was also brought into the fray as an ad hoc judge for these proceedings.

East Timor is seeking provisional measures -- essentially an injunction -- that would require Australia's giving the documents and other materials to the court, and an assurance that Australia will not intercept communications between East Timor and its legal advisers.

Beyond the interim measures, East Timor is seeking a declaration from the court that the seizure of documents from Mr Collaery's Canberra residence violated its sovereignty and other rights, and that Australia be ordered to return the documents, issue a formal apology and pay its costs.

A final hearing for the provisional application will take place in The Hague today.