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## Timor-Leste v Australia: what each country stands to lose

As a tiny nation battles in The Hague for oil and gas revenue, Australia's reputation as a good global citizen is questioned

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Australia's lawyers John Reid and Justin Gleeson confer during the Timor-Leste case in The Hague. Photograph: Nicolas Delaunay/AFP

At the international court of justice in The Hague this week, the tiny half-island nation of Timor-Leste has accused Australia of violating its sovereignty in a souring battle for natural resources.

The case relates to a protracted dispute over the Greater Sunrise field, an estimated \$40bn worth of oil and gas reserves in the Timor Sea.

Timor-Leste has called for Australia to be internationally condemned after it authorised a raid on the office of Bernard Collaery, Timor-Leste's Canberra-based lawyer, from which documents were seized, and the home of a former Australian spy last December.

The former spy, now a key witness, alleges that Australia bugged the Timor-Leste parliament to listen in on Sunrise talks in 2004. Timor-Leste has told international arbitration in a separate case that that move should see a subsequent 2006 treaty nullified.

Streamed live on the ICJ website – in contrast to the behind-closed-doors arbitration over the treaty – the first days of the ICJ case were marked by a battle for international image.

Timor-Leste has attacked Australia's standing as a good global citizen, while Australia has defended the raids as a matter of national security, and rejected the "inflammatory" remarks of its tiny neighbour.

James Crawford, a professor of international law at the University of Cambridge, the final speaker for the Australian legal team on Tuesday, criticised Timor-Leste for bringing the case to the ICJ at all.

Given the public nature of the ICJ hearings, Crawford argued that Timor-Leste was seeking to “maximise the opportunity for publicity and comment prejudicial to Australia”.

Some analysts suggest Timor-Leste must have had an idea that Australia would be spying, but others argue that, at a time when Edward Snowden was yet to be part of the global consciousness, and in a post-conflict society emerging from decades of bloody occupation, it may have been caught off-guard.

“I didn’t know for sure then if we were being spied on but I am convinced now,” said Ricardo Ribeiro, the former head of Timor-Leste’s intelligence agency, “especially because we were so technologically behind Australia.”

Ribeiro recalls Australian agencies revamping the government buildings post-independence, including the office of his intelligence team.

The most galling aspect of the spying claims, Timorese say, is that Australia purportedly spied not for political, but commercial gain – and on a relatively impoverished nation.

“If we draw a line, we are a very poor country, very small, in the middle of nowhere on the map,” said Nelson Belo, director of Fundasaun Mahein, a Dili-based NGO,

“It’s kind of severe of Australia.”

The Timorese are disappointed but not angry at Australia and want to sit down and put their legal arguments forward, said Belo, commenting in a personal capacity.

“As a Timorese, we see that as a right,” he said, “a sovereign right that we should defend.”

On the other hand, some observers believe Timor-Leste, which attempted to negotiate the treaty bilaterally last year, is trying to capitalise on a moment it has long been angling for.

Edward Rees, a former special envoy to the United Nations in Timor-Leste in 2002, says the country is “taking advantage” of a broader global debate on the legitimacy of spying to push for a better deal on shared resources with Australia.

“Timor-Leste has been a bit creative because, had WikiLeaks not done its thing, had Edward Snowden not done a thing, this whole business of spying and the controversy around it would not be such a big deal,” he said. “It’s assumed.”

Rees argues it would be naive to suggest Timor-Leste had no inkling the Sunrise talks might be tapped.

“As the Timorese have already said, ‘We strongly believed they were listening to our conversations, but we didn’t think they would actually put bugs in the wall’,” said Rees, who recalls returning to the country in 2004 and observing the parliament building had undergone a “no-expenses-spared” transformation.

The 2006 Certain Maritime Arrangements in the Timor Sea, or CMATS, is the agreement that divides the Greater Sunrise field between the two countries. Some in Timor-Leste have long seen it as a raw deal.

The treaty stipulates a 50-50 split of the proceeds of the maritime energy fields in the Timor Sea, but is also premised on a contentious gag order.

Then foreign minister Alexander Downer offered Timor what it said was a greater share of the Sunrise resources if it agreed not to dispute any maritime borders, in any forum, for the next 50 years.

But analysts say that if standard international norms were applied, the entire Greater Sunrise reserve would fall to Timor-Leste.

Charlie Scheiner, from the Dili-based NGO the Timor-Leste Institute for Development

Monitoring and Analysis, says Australia's continental shelf boundary argument is a total fraud.

"People who follow this issue closely and know the history of it see that Australia is profiting tens of billions of dollars from maritime territory that they seized illegally as part of the Indonesian occupation," said Scheiner, "and all of these more recent agreements are just an attempt to legitimise that."

Timor-Leste's resistance to the deal is nothing new. The development of the Greater Sunrise field has been stalled for years because of a dispute between the country and field operators, Woodside Petroleum, about how the field should be developed.

For his part, Timor-Leste's prime minister, Xanana Gusmao, has spent countless hours decrying the Sunrise deal to the Timorese populace.

"Xanana has been preparing the Timorese population for a fight with the Australians now for five years ... explaining how the Australians have stolen Timorese money and that they weren't going to put up with it anymore," said Rees.

According to Rees, Gusmao used large power point projections in remote areas with no electricity to explain how the nation's oil wealth would transform it from a fragile nation to a stable middle-income country.

The presentation featured the famous 1989 photo of then Australian and Indonesian foreign ministers Gareth Evans and Ali Alatas drinking champagne on a private plane over the Timor Sea, the area the 2006 treaty prohibits Timor-Leste from disputing.

Meanwhile, Rees says the real reason Australia is being so obtuse about the border issue is that it fears a renegotiation with Timor-Leste will prompt similar calls from an increasingly pushy Indonesia.

"Entering into a maritime discussion with Jakarta is a totally different ball game than it is with Dili, and much more important to the Australians," he said. "And the Indonesians are increasingly of the opinion that they like to push around Canberra and they are increasingly able to."

For now, as Timor-Leste battles it out in the international courts, it cannot afford to stall on the Sunrise deal forever.

Revenue from the oil and gas fields currently being exploited account for 80% of GDP and without Sunrise are only expected to last seven years. The country is under pressure to reduce its dependency on resources before the money runs out.

Spending millions on international lawyers, says Scheiner, is a distraction from the bigger issues Timor-Leste needs to address.

If Australia wins at the ICJ it may be seen as the bully that got away with it. But even if Timor-Leste wins, it will still have to negotiate the maritime border with its wealthy neighbour.

The ruling by the international courts is final and binding, but Scheiner says the ultimate result is very much in Australia's hands.

"It depends on whether Australia wants to be seen as a good international citizen," he said, "And I'm not sure how much it bothers them that they are international outlaws. Maybe it doesn't bother them at all."