

[News](#)  
[World news](#)  
[Australia](#)

## Timor-Leste files taken in Canberra Asio raid must be sealed, court orders

Assurances of protection given by the attorney general, George Brandis, fail to satisfy judges in the Hague

---

[Daniel Hurst](#)  
[theguardian.com](#), Monday 3 March 2014 17:13 EST



George Brandis gave a written undertaking in January that the seized material would not be made available to any part of the Australian government. Photograph: Lukas Coch/AAP

The international court of justice has ordered Australia to keep documents it seized from Timor-Leste's Canberra-based lawyer protected under seal, after ruling that promises by the attorney general, George Brandis, did not eliminate the "risk of irreparable prejudice".

The principal judicial organ of the United Nations in the Hague also told Australia not to interfere in communications between Timor-Leste and its legal

advisers.

Timor-Leste launched proceedings against Australia after the Australian Security Intelligence Organisation (Asio) seized documents and data from the Canberra office of a legal adviser to Timor-Leste, Bernard Collaery, on 3 December, on the grounds of national security.

Timor-Leste has said it has irrefutable proof that Australia bugged the country's cabinet room to gain an unfair advantage in the lead-up to a 2006 agreement extending the length of a valuable oil and gas treaty. Those claims are being examined by an arbitration tribunal.

Timor-Leste was seeking urgent orders from the UN court that Australia surrender the highly sensitive documents to prevent further harm before a proper examination of the case at a later date. Australia argued provisional measures sought by Timor-Leste were unnecessary, in part because of [Brandis's "comprehensive" undertakings designed to address the country's concerns.](#)

Brandis gave a written undertaking on 21 January that the seized material would not be made available to any part of the Australian government for any purpose in connection with the exploitation of resources in the Timor sea or related negotiations, or in connection with the conduct of the current case before the court or of the proceedings of the Timor Sea Treaty Tribunal.

[In an order published late on Monday in the Hague](#), the court said it had no reason to believe Australia would not implement the undertaking, but pointed out that Australia had left the door open to using the material for "national security purposes" including potential law enforcement referrals and prosecutions.

This presented "a risk of disclosure of this potentially highly prejudicial information", the court said. While the undertaking made "a significant contribution towards mitigating the imminent risk of irreparable prejudice" to Timor-Leste's rights, it did not remove this risk entirely.

The court decided it was appropriate for it to indicate certain measures in order to protect Timor-Leste's rights pending a subsequent decision on the merits of the case.

"The court is of the view that the right of Timor-Leste to conduct arbitral proceedings and negotiations without interference could suffer irreparable harm if Australia failed to immediately safeguard the confidentiality of the material seized by its agents on 3 December 2013 from the office of a legal adviser to the government of Timor-Leste," it said in its decision.

“In particular, the court considers that there could be a very serious detrimental effect on Timor-Leste’s position in the Timor sea treaty arbitration and in future maritime negotiations with Australia should the seized material be divulged to any person or persons involved or likely to be involved in that arbitration or in negotiations on behalf of Australia. Any breach of confidentiality may not be capable of remedy or reparation as it might not be possible to revert to the ‘status quo ante’ following disclosure of the confidential information.”

The court decided, by 12 votes to four, that Australia “shall ensure that the content of the seized material is not in any way or at any time used by any person or persons to the disadvantage of Timor-Leste until the present case has been concluded”.

It also decided, by the same margin, that Australia “shall keep under seal the seized documents and electronic data and any copies thereof until further decision of the court”.

The court directed, by 15 votes to one, that Australia “shall not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the pending arbitration under the Timor sea treaty of 20 May 2002, with any future bilateral negotiations concerning maritime delimitation, or with any other related procedure between the two states, including the present case before the court”.

Collaery said the decisions vindicated Timor-Leste’s position. “I think it’s a sad day that an order like that has to be given to a rule-of-law country that Australia should be,” he told the ABC.

Brandis said Australia was pleased the court had refused Timor-Leste’s application to hand over the documents. “The order of the court extended, until the final hearing of the case, undertakings which were offered by Australia during the course of the hearing,” Brandis said. “These orders will, of course, be complied with. This is a good outcome for Australia.”

The substantive case will be decided at a later date. Timor-Leste contends that the Asio raid on its lawyer violated the nation’s sovereignty and property rights. It is seeking the return of the documents and a formal apology.