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## Stop Spying On Timor, Court Tells Australia

By Tom Clarke

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In a world first, the International Court of Justice has ordered Australia to stop spying on East Timor, writes the Timor Sea Justice Campaign's Tom Clarke

Yesterday, the ICJ delivered a provisional decision in a case that East Timor brought against Australia, following [dramatic ASIO raids](#) [6] that occurred late last year on the Canberra offices of Timor's lawyers. The lawyers had been preparing for a significant legal proceeding challenging an oil and gas treaty when ASIO seized the legal team's documents and the passport of a key witness.

Concerned that this would give Australia an unfair advantage in the case, East Timor launched an injunction-like legal action to have the documents handed back or given to the ICJ for safe keeping.

The ICJ has accepted assurances from Australia's Attorney-General, George Brandis, that he has made undertakings to ensure no one will read the seized files until the court has made a final decision on the legality of the raids and whether the documents will need to be returned.

However, the ICJ also delivered a clear, binding legal order for Australia not to use national security as an alibi for conducting commercial espionage and insisted that Australia cease inferring with East Timor's communications with its lawyers.

This is a wake up call for Australia. The highest legal authority in the world has warned that you can't send in the spooks in order to short-change your neighbours in your commercial dealings.

While this particular case is merely a sideshow to the main attraction — Timor's challenge to the CMATS treaty, covering the Greater Sunrise gas field, worth an estimated \$40 billion — it does once again highlight Australia's selective approach to recognising the ICJ's authority.

Australia's acceptance of the independent umpire's decision on this matter is in stark contrast to our

refusal to accept the same umpire's decision on the positioning of permanent maritime boundaries between Australia and East Timor.

Australia was willing to send an elite legal team of QCs, barristers and solicitors to defend itself in what is essentially a squabble about whether these documents seized by ASIO are in sealed envelopes or not. However, when it comes to the problem at the core of this entire episode — the absence of permanent maritime boundaries between Australia and East Timor — Australia will not even consider showing up to court.

Just months before East Timor became independent in 2002, Australia withdrew its recognition of the maritime boundary jurisdiction of the International Court of Justice and the International Tribunal on the Laws of the Sea.

This means East Timor has no legal avenue in which to challenge Australia's stubborn refusal to establish permanent maritime boundaries. Instead, in order to benefit from its own oil and gas resources, it has had to resort to a series of temporary deals with Australia that short-change East Timor out of billions of dollars.

Turning your back on the independent umpire as Australia has done isn't the act of a country that is confident of its own legal position. It's the act of a bully.

It doesn't matter how many times former Foreign Minister Alexander Downer is wheeled out to peddle antiquated arguments about "prolonged continental shelves" or myths about "unravelling boundaries with Indonesia", the perennial question remains: if Australia is so confident of its legal position, why does it refuse to consider having an independent body, such as the ICJ, arbitrate the dispute?

Agreeing to independent arbitration, in case an amicable solution continues to prove elusive, would demonstrate that both parties are acting in good faith and are willing to play by the rules. East Timor has made this commitment. Australia has not.

International law overwhelmingly favours median line boundaries in situations such as this, when coastlines are less than 400 nautical miles apart. That simply means drawing a line half way between the two coastlines, meaning if a field is closer to Timor it would belong to Timor and if it was closer to Australia it would be ours.

In 2004, when Australia and New Zealand established a maritime boundary to resolve overlapping claims off Norfolk Island, Australia agreed to a median line boundary. This is yet another example of Australia's selectiveness when it comes to adhering to international law. Evidently, adhering to the rules is easier when billions of dollars in government revenue from oil and gas resources are not at stake.

The CMATS treaty splits government revenue from the \$40 billion Greater Sunrise gas field 50/50. At first glance this may sound fair. However, if permanent maritime boundaries were established in accordance with current international law, East Timor's probable exclusive economic zone would encompass all of the Greater Sunrise field as well as all of the joint development area it already gives Australia a share of.

When allegations surfaced that Australia had bugged the Timorese cabinet room during negotiations over CMATS, Timor saw its chance to revisit this unfair deal.

A former high ranking Australian spy came forward with evidence of espionage for economic gain after he learnt that former Foreign Minister Alexander Downer, after leaving parliament, had gone on to perform paid consulting work for Woodside Petroleum — the company currently with the rights to develop Greater Sunrise.

It's these matters that are covered in the more significant legal proceeding underway in the Court of Arbitration at The Hague. The question is: did Australia gain an unfair advantage during negotiations

over CMATS through the dirty tactics of spying? If so, the CMATS treaty that so dramatically short-changes East Timor out of billions of dollars can be torn up.

Unfortunately, this game of legal snakes and ladders would see us back at square one — East Timor wanting permanent and equitable maritime boundaries and the Australian Government refusing and also shunning the independent umpire.

What will break the deadlock? History tells us that when enough Australians take note and get active, we can change our Government's policy towards East Timor. The Australian public is once again required to demonstrate to our Government that we believe East Timor deserves a fair go in the Timor Sea.