

ASIO raids: Australia accuses East Timor of 'frankly, offensive' remarks

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Australia has accused East Timor of making "frankly, offensive" remarks before the International Court of Justice about Attorney-General George Brandis, as its lawyers suggested the tiny nation may have encouraged the commitment of a serious crime here.

The heated testimony to the United Nations pre-eminent judicial body on Tuesday came as East Timor seeks to have legal documents seized by ASIO last month returned.

The documents include correspondence between East Timor's lawyers and an outline of its legal strategy relating to a concurrent international arbitration where the fledgling nation is seeking to have a treaty it signed with Australia over \$40 billion in oil and gas reserves in the Timor Sea declared invalid.

The key witness for East Timor in the arbitration is a former Australian Secret Intelligence Service operative who is alleging Australia bugged East Timor during negotiations over the treaty in 2004 and gained an unfair advantage. The ex-agent's office was raided along with the office of East Timor's Australian lawyer Bernard Collaery on December 3.

Senator Brandis has given multiple undertakings to the ICJ that the documents would not be read by himself, nor anyone representing Australia in the contentious arbitration, bolstered by a new vow on Tuesday that the documents would not be passed to any individual or agency that wasn't directly involved in national security or law enforcement.

East Timor's contention on Monday that Senator Brandis' undertakings may not be enforced and had to be treated cautiously was described by John Reid, Australia's agent at the ICJ, as "frankly offensive".

East Timor's "inflammatory" submissions to the court had "impugned the integrity of the attorney-general of Australia", he said.

Moreover, the remark from East Timor's counsel (and former principal legal adviser to Australia's department of foreign affairs) Sir Elihu Lauterpacht that Australia's standards as a good international citizen were slipping had "wounded" and was without foundation.

East Timor is basing its legal case on the principle that the legal documents, laptops and USB stick confiscated by ASIO were its sovereign property. This was described by another Australian representative before the ICJ, Bill Campbell QC, as "beyond credulity" that, if accepted, would rewrite international law to extend a nation state's right of sovereignty into other nation states.

Australia argues the raids were justified because the alleged disclosure of an intelligence operation to a foreign country by the ASIS agent was a serious criminal offence under Australian law. As such, legal professional privilege did not apply to the material seized and the raids were in accordance with both domestic and international law.

Indeed, Australia's solicitor-general Justin Gleeson - who also spoke at the ICJ - went as far as saying that East Timor "may be encouraging the commitment of that crime".

The final speaker in Australia's heavyweight legal team was James Crawford, a professor of international law at the University of Cambridge.

He queried why the matter was being heard by the ICJ at all. He said East Timor's concerns about the raids and demands for the return of its documents could have been ruled upon in the arbitration case on the Timor Sea Treaty, which is also being heard at the Hague.

He noted that the arbitration was being held behind closed doors while the ICJ conducted public hearings, which are livestreamed on its website.

Professor Crawford said that, by requesting the matter be heard by the ICJ, East Timor was seeking to "maximise the opportunity for publicity and comment prejudicial to Australia".

Final oral submissions to the court will be made on Wednesday.

This story was found at: <http://www.smh.com.au/federal-politics/political-news/asio-raids-australia-accuses-east-timor-of-frankly-offensive-remarks-20140121-3178g.html>