

## Australia ordered to cease spying on East Timor by International Court of Justice

Tom Allard

Published: March 4, 2014 - 10:28AM

Australia has been ordered to cease spying on East Timor and its legal advisers, in a landmark decision by the International Court of Justice relating to a bitter dispute between the two countries over \$40 billion of oil and gas reserves in the Timor Sea.

The court also ruled that the Australian government must seal documents and data seized in an ASIO raid in December. The ICJ is the United Nations' top court, and its decisions are binding on members.

The decision is a major setback for Attorney-General George Brandis, who authorised the raid on East Timor's Australian lawyer Bernard Collaery, where about a dozen agents swooped on his office and took reams of material, including legal documents, electronic files and a statement by a former Australian Secret Intelligence Service agent alleging an eavesdropping operation on the tiny half island nation by Australia.

East Timor suspects the ASIO raid last year was only part of a massive espionage campaign against it by Australia as the impoverished nation seeks to have the treaty between the two countries over the Timor Sea reserves declared invalid by an international arbitration tribunal in the Hague because it was not negotiated in good faith.

The arbitration case of East Timor, also known as Timor Leste, is underpinned by the testimony of the ex-ASIS operative, who alleges that East Timor's government offices were bugged during treaty negotiations.

The former agent was also targetted by an ASIO raid in December and had his passport seized, preventing him from going to the Hague.

"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 between Timor Leste and Australia; 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," ICJ president Peter Tomka said.

The ruling endorses a request by East Timor. It is a provisional measure until the case is concluded in the ICJ but is wide in scope, relating not only to the arbitration in the Hague and case before the ICJ, but also any other matter relating to the dispute over the Timor Sea reserves, which includes the huge Greater Sunrise deposit.

The case before the ICJ is not expected to be concluded for at least 12 months.

In a statement, Senator Brandis said the court's orders would be complied with, although he did made no direct reference to the ruling prohibiting Australia spying on East Timor.

He noted that the ICJ had declined East Timor's request for the documents to be returned to it.

"The Australian government is pleased with the decision," he said. "This is a good outcome for Australia."

It is the first time that the court has imposed restrictions on the spy agencies of one of the so-called "five eyes" intelligence community of the US, Britain, Canada, New Zealand and Australia and comes at a time about widespread

international concern about over-reach by Western intelligence agencies.

The ruling was endorsed by 15 of the ICJ's panel of judges. The only dissenter was ad hoc judge Ian Callinan, the former Australian High Court judge appointed to the panel by Senator Brandis.

Among those who supported the finding were judges on the ICJ from the US, Britain and New Zealand.

"It's a sad day when our country gets an order like this," Mr Collaery told Fairfax Media. "It's a sad day when Australia needs to be reminded of the proper standards of behaviour regarding litigation."

While East Timor did not get the documents returned to it, it was successful in getting the material sealed so no Australian official could view them.

Senator Brandis made numerous undertakings to the ICJ vowing that Australian officials involved in the arbitration would not have access to the material seized on the raids, but only until the provisional judgment was handed down. He even promised not to read the material himself, at least without first informing the court and giving further undertakings.

The only circumstances where the material might be accessed, Australia told the court, was for "national security" matters, specifically bringing any prosecutions to court in Australia over the unauthorised disclosure of the classified information, presumably by the ex-ASIS agent.

The ICJ decision means any prosecution of the former intelligence officer will almost certainly have to be delayed.

The ICJ found that Senator Brandis' undertaking did make a "significant contribution" to ensuring the material seized in the raids remained confidential.

However, "the court finds that there remains a risk of disclosure of this potentially highly prejudicial information", Judge Tomka said.

"In spite of the written undertaking [by Senator Brandis] dated 21st January 2014, there is still an imminent risk of irreparable prejudice."

This was because the material "contains sensitive and confidential information [relating] to the pending arbitration and it may also include elements that are pertinent to any future maritime negotiations which may take place between the parties".

The court made two further rulings as a result.

"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 [before the ICJ] has been concluded," it said.

"It also decides . . . that Australia shall keep under seal the seized documents and electronic data and any copies thereof until further decision of the Court."

This ruling was endorsed by 12 members of the panel but opposed by four, including Mr Callinan and the three judges from the US, Britain and New Zealand.

*This story was found at: <http://www.smh.com.au/federal-politics/political-news/australia-ordered-to-cease-spying-on-east-timor-by-international-court-of-justice-20140304-hvfya.html>*