

Timor-Leste presses ahead with challenge to Timor Sea oil and gas treaty

Now that Australia has handed back disputed documents, Timor-Leste is challenging the 2006 treaty after accusations of spying

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Timor-Leste is set to resume a formal challenge against an oil and gas treaty that became mired in controversy following claims Australia bugged the cabinet room in Dili to gain the upper hand in negotiations.

But the government of Timor-Leste has decided to withdraw an International Court of Justice case against Australia relating to evidence seized by the Australian Security Intelligence Organisation (Asio) in raids in December 2013.

Those raids, authorised by the Australian attorney general, George Brandis, targeted the offices of Timor-Leste's Canberra-based legal adviser, Bernard Collaery, "on the grounds that the documents contained intelligence related to security matters".

But after ICJ hearings in The Hague last year, and a preliminary ruling that Australia keep the documents protected under seal, both countries entered talks to resolve the dispute. Australia had previously defended its right to seize the documents but recently agreed to hand them back to Timor-Leste.

While the return of the documents has prompted the discontinuation of the ICJ case, it has not deterred the Timor-Leste government from pressing ahead with arbitration against Australia, challenging the validity of the '2006 Treaty on Certain Maritime Arrangements in the Timor Sea'.

Timor-Leste has previously said it had irrefutable proof that Australia bugged the cabinet room to obtain an unfair advantage in the lead-up to the treaty being signed. John Howard's Coalition government was in power in Australia at the time.

Tony Abbott's Coalition government said on Friday that Australia remained committed to the treaty and would "strongly defend the arbitration".

Timor-Leste's minister of state, Agio Pereira, said the the country had agreed in September 2014 to adjourn both the ICJ case and arbitration for six months to allow for substantive dialogue, but this had not produced a road map for structured talks on maritime boundaries.

"Timor-Leste's preference is always to avoid legal confrontation and focus all of our energy and resources on national development. However, it is also the mandate of the government to defend the national interest," he said in a statement issued this week.

"Timor-Leste is focusing on moving forward in its relationship with its neighbour to substantive dialogue to finalise a permanent maritime boundary based on the principles of international law."

Brandis and Australia's foreign affairs minister, Julie Bishop, issued a joint statement on Friday saying that the countries' differences were "best resolved through consultation". They were

“therefore disappointed that Timor-Leste has decided to resume the arbitration against Australia challenging the validity”.

“The Australian government reached agreement ... with Timor-Leste in 2006 and we remain committed to the treaty,” Brandis and Bishop said.

“Both governments agreed to defer further maritime boundary negotiations during the life of the treaty. Australia remains committed to that agreement and is disappointed that Timor-Leste is attempting to re-open it.”

Brandis and Bishop said the existing treaty framework had “provided an effective means to share resources claimed by both countries and to develop them jointly” and also provided “the certainty required by international companies in order to make substantial investments in the resource sector”.

“Under the Timor Sea treaty framework, Timor-Leste receives 90% of revenue from the ‘Joint Petroleum Development Area’ and will receive 50% of the upstream revenue from the Greater Sunrise fields - despite nearly 80% of the Greater Sunrise fields lying in an area of exclusive Australian seabed jurisdiction.”

In the same statement, Brandis and Bishop said they welcomed formal notification that Timor-Leste would discontinue the ICJ case relating to documents.

“Australia returned the documents in question in the dispute in good faith, without acknowledgment that Australia had violated Timor-Leste’s sovereign rights,” the ministers said.

The return of the documents followed a preliminary order by ICJ in March 2014 that Australia “shall keep under seal the seized documents and electronic data and any copies thereof until further decision of the court” and “not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the pending arbitration”.

Timor-Leste said the documents were returned on 12 May under the supervision of the country’s ambassador to Australia, Abel Guterres. It pointed out Australia had defended its right to seize and hold the documents for 16 months.

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