

The World Today with Eleanor Hall

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Australia, East Timor to face off in the Hague

Will Ockenden reported this story on [Thursday, December 5, 2013](#) 12:18:00

ELEANOR HALL: Australia and East Timor will face off in The Hague today over a dispute which covers the lucrative oil and gas fields between the two nations and which is at the centre of this week's spying controversy.

East Timor's government is expressing outrage that it's without a key witness because of the raids conducted this week by Australia's domestic spy agency on the Canberra offices of its lawyer Bernard Collaery and on the home of a former Australian intelligence agent.

The Attorney-General, George Brandis, says he authorised the raids on grounds of national security, and insists it was not an attempt to impede The Hague case.

But East Timor's government is not convinced, and international law experts are questioning the legal basis of the ASIO (Australian Security Intelligence Organisation) raids.

Will Ockenden has our report.

WILL OCKENDEN: It's Australia versus East Timor in the international arena of The Hague over a lucrative treaty with billions of dollars of oil and gas at stake.

CHRIS MICHAELSEN: East Timor feels that it's been sort of disadvantaged by that treaty.

WILL OCKENDEN: It's the alleged actions of Australian spy agency ASIS (Australian Security Intelligence Service) in Timor nearly a decade ago that have led to the arbitration.

The claims are that ASIS bugged the rooms of the Timorese cabinet, giving Australia the upper hand in negotiations over the boundaries of a rich oil and gas field worth tens of billions of dollars.

But it's the actions of Australia's other spy agency, ASIO, in raiding the Canberra offices of the lawyer for East Timor and the home of an unnamed intelligence whistleblower, which are now coming under scrutiny.

CHRIS MICHAELSEN: The legal basis for the raids conducted by ASIO is very shady.

WILL OCKENDEN: Chris Michaelson is a senior lecturer in law at the University of New South Wales.

He says the ASIO raids are questionable.

CHRIS MICHAELSEN: I don't think that necessarily it would disrupt the case in The Hague too significantly since, on face value it seems it's more, sort of an intimidation operation.

WILL OCKENDEN: Yesterday, the Attorney-General, George Brandis, issued a ministerial statement explaining the possible reasons for the ASIO raids.

He said under the Australian Security Intelligence Organisation Act, specifically Section 25, ASIO can request the Attorney-General to approve a search warrant.

GEORGE BRANDIS: In the protection of the Commonwealth and its people from espionage, sabotage, politically-motivated violence, attacks on Australia's defence system or acts of foreign interference and the protection of Australia's territorial and border integrity from serious threats.

WILL OCKENDEN: George Brandis wouldn't say which of those categories the raid falls under, citing

national security.

The East Timorese government is far from convinced, claiming it was done to muzzle and impede its case in The Hague.

In a statement the country's prime minister said it's not about national security, as it has been characterised by Australian officials.

Chris Michaelsen agrees.

CHRIS MICHAELSEN: It's been claimed by Brandis that the basis for the raid is Section 25 of the Australian Security Intelligence Organisation Act, but if you actually look at Article 25 of that act, it basically allows ASIO to conduct raids for the protection of national security. But if you look at the definition of security in the act, it talks about espionage, about sabotage, about political motivated violence and I can't quite see how information relating to a possible whistle-blowing would relate to Article 25 of the ASIO Act.

WILL OCKENDEN: The passport of a former spy was also seized in the raids, and cancelled.

He was supposed to give evidence in his involvement in the ASIS spying case.

CHRIS MICHAELSEN: It's a criminal offence for an ASIS agent to publicise any sort of information in relation to his employment at ASIS, and that would be a criminal offence. But ASIO is not in charge with investigating criminal offences. You know, if there was a criminal matter it's for the Australian Federal Police or regular prosecution to pursue the matter not for ASIO.

ASIO is an intelligence agency and can only enter and search premises on the basis of Article 25 of the ASIO Act.

WILL OCKENDEN: Paul Cleary was an adviser to the East Timor government during the treaty negotiations.

PAUL CLEARY: I was responsible for a lot of liaison and the media strategy and really the political strategy as well.

WILL OCKENDEN: He says the East Timorese government knew they were likely being monitored, and The Hague case is an unneeded distraction for East Timor.

PAUL CLEARY: My concern as well is back in 2004/5, I mean the newly developed country, newly independent country, which had absolute mass poverty, mass unemployment, really no economic activity happening other than the offshore oil, Timor Sea negotiations became a huge distraction from the task of nation building. And my concern is that will happen again and that Timor risks falling into the same trap of becoming preoccupied with this big bad foreign neighbour and it won't be able to really focus on what's really, really important.

ELEANOR HALL: And that's the former advisor to the East Timor government, Paul Cleary ending that report form Will Ockenden.

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