

ICJ orders Australia to stop spying on East Timor



An East Timor activist paint Australian Embassy's wall during a protests at Australian Embassy in Dili, East Timor (AAP)

The ruling by the International Court of Justice that bans Australia from using documents seized during an intelligence raid of Timor Leste's Canberra-based lawyer, is being seen as a victory for Australia's tiny half-island neighbor.

By Kate Lamb

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The highest court at The Hague ruled on Monday that “Australia shall not interfere in anyway in communications between Timor-Leste and its advisors in connection with the pending Arbitration under the Timor Sea Treaty of 20 May 2002 between Timor-Leste and Australia...”

While Australia was not forced to return the documents seized in a raid by the Australian Security Intelligence Organization (ASIO) last December, the court did order for the material to be kept under protected seal.

Charles Scheiner, a researcher at the Dili-based NGO, La'o Hamutuk, says the decision is a clear win for Timor-Leste.

“All of the written decisions [except Callinan's] were unambiguous in saying that Australia's conduct was wrong,” says Scheiner, referring to ad-hoc judge Ian Callinan, a former Australian High Court judge and the only dissenting voice on the ICJ panel of 15 judges.

Australian Attorney General George Brandis, who authorized the December 3 raid, appointed Callinan to the international panel.

According to Timor-Leste the material seized from the Canberra office of its lawyer, Bernard Collaery, contains documents, data and correspondence related to a separate legal battle for control over \$40 billion in oil and gas reserves located in the Timor Sea.

Timor-Leste is calling for the treaty that divides the reserves equally between the two countries to be nullified following allegations Australia bugged the Timorese parliament so it could listen in on the treaty negotiations.

A former Australian intelligence agent, who was also targeted in the ASIO raid, is the key whistleblower in the case.

The fact that ICJ agreed to consider the “urgent request” and issue a provisional ruling – reducing the chance Australia could use the seized material in the related arbitration case – is also a victory for Timor-Leste, says Mr. Scheiner.

The request was lodged on December 17 last year, just weeks after the ASIO raid.

Timor-Leste claimed at the time the seizure of the material would jeopardize its case despite written assurances from Senator Brandis the material would not be available to any part of the Australian government for any purpose related to the Timor dispute.

This January Senator Brandis informed ASIO the material was “not to be communicated to any person for any purpose other than national security purposes”.

The ICJ acknowledged the written undertakings but said there was “still an imminent risk of irreparable prejudice”.

Timor-Leste observer Edward Rees argues it would be naïve to suggest the documents have not already been examined by Australian authorities, but it remains unclear what impact that could have on the legal dispute over the maritime treaty, and related division of oil and gas reserves.

“It is likely ASIO has already read the seized documents, if not why would they confiscate them in the first place?” asks Rees, who says it is a matter of conjecture as to whether they have been seen by other parts of the government.

“If not then I don’t think it will have any bearing on the maritime boundary case other than serve to heighten awareness that Timor-Leste is likely being ripped off on the boundary issue,” he says, “If yes, then clearly Timor-Leste will be at a disadvantage in the arbitration.”

Critics say the 2006 Certain Maritime Arrangements in the Timor Sea, or CMATS, the agreement that divides the Greater Sunrise field between the two countries, was unfairly negotiated.

If international norms were employed to determine the maritime boundary, they argue, the \$40 billion in oil and gas reserves would fall entirely within Timor-Leste territory.

“I think Timor-Leste’s fundamental case for a maritime boundary based on equidistance remains very strong,” says Mr Scheiner of the possible repercussions of Monday’s ICJ decision, “and nothing Australia confiscated or overheard will change that.”