

# East Timor takes Australia to International Court of Justice over ASIO raids

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The East Timorese government last week initiated a case in the International Court of Justice in The Hague over raids carried out on December 3 by the Australian Security Intelligence Organisation (ASIO) on the orders of the Liberal-National government.

On the pretext of “national security,” ASIO raided the offices of Australian barrister and former Australian Capital Territory Attorney General Bernard Collaery. He is representing the East Timorese government in an application to the Permanent Court of Arbitration, another international judicial body in The Hague, to revise or nullify an oil and gas revenue-sharing treaty because of Australian espionage in 2004.

Collaery and the East Timorese government claimed to have proof that Australian spies were ordered by then Australian Foreign Minister Alexander Downer to install listening devices in Timorese government offices in Dili while posing as aid workers helping to construct and renovate public buildings.

At the same time as the ASIO raids, the Australian government cancelled the passport of a former Australian Secret Intelligence Service (ASIS) technical operations director—who was involved in the 2004 operation and has since come forward as a whistleblower—preventing him from going to Holland and testifying in person.

The Timorese bid to challenge Canberra’s illegal actions before the International Court of Justice (ICJ) marks a further escalation of diplomatic tensions between the tiny state and its imperialist neighbour.

East Timor has asked the ICJ to rule that the seizure and continued retention of legal documents and electronic data by ASIO violated the country’s sovereignty and breached international law. It wants Canberra ordered to issue a formal apology and pay Timor’s legal expenses.

As “provisional measures,” ahead of a final ruling by the ICJ that is likely to take at least several months, the Timorese have requested that all material seized from Collaery’s offices be immediately returned, all copies made by Australian officials be destroyed, and a list provided of everyone who was given these copies. In addition, Dili has demanded that Canberra “give an assurance that it will not intercept or cause or request the interception of communications between Timor-Leste and its legal advisers, whether within or outside Australia or Timor-Leste.”

Initial hearings, to consider the application for these “provisional measures,” have been scheduled for January 20-22.

The documents seized by ASIO include correspondence between East Timorese Prime Minister Xanana Gusmao and Collaery, as well as advice from international law experts, including British QC Vaughan Lowe. The *Sydney Morning Herald* reported that Lowe outlined the strengths and weaknesses of East Timor’s case in the Permanent Court of Arbitration.

Stephen Webb, of international law firm DLA Piper and another partner advising the East Timor government, told the *Herald*: “Such internal advice documents would never be shown to the other side, in this case the Australian government, during legal proceedings. Internal legal advice is legally privileged and obviously highly sensitive.”

The entire “security” operation conducted earlier this month was aimed at bolstering the Australian government’s position before the Permanent Court of Arbitration, and protecting its ongoing intelligence operations against East Timor and elsewhere in Asia.

Mafia-style tactics and blatant contempt for international law have been the hallmark of successive

Australian governments, both Labor and Liberal, in their scramble to maintain control over strategically significant areas of the Timor Sea and its oil and gas reserves.

In 1975, the Whitlam Labor government encouraged the Indonesian junta's invasion of the former Portuguese colony, and in 1989 the Hawke Labor government became the only Western country to formally recognise Indonesia's annexation of East Timor, in return for the Timor Gap treaty that granted Australia a large share of the enormous undersea energy reserves.

Ten years later, in 1999, the Liberal government of John Howard launched a military intervention into the territory, using a bogus "humanitarian" pretext, in order to maintain Australian hegemony by overseeing a transition to so-called independence after Jakarta's continuing rule became untenable.

The Howard government subsequently strong-armed Dili into signing a series of treaties carving up the Timor Sea's resources. Under recognised international law, the maritime boundary ought to be set mid-way between the two countries' land mass, leaving the biggest reserves on the Timorese side. In 2002, however, Canberra declared it would no longer submit to maritime border rulings by the International Court of Justice and the International Tribunal for the Law of the Sea.

Following the 2004 espionage operation, and other dirty tricks, including the alleged covert bribing of members of the Timorese negotiating team, the Australian government succeeded in securing 50 percent of the oil and gas revenues from the Timor Sea and deferring any setting of a maritime boundary for 50 years.

This outcome is now being challenged by the Timorese government because it confronts the prospect of outright destitution unless the Greater Sunrise gas fields are developed.

Dili is the most oil-dependent state in the world, with about 95 percent of government revenue deriving from another Timor Sea oil and gas field, Bayu-Undan, that is expected to run dry within a decade. Woodside Petroleum, the Australian corporate giant at the head of the Australian-US consortium with the rights to develop Greater Sunrise, has refused to invest anything in the project unless Dili drops its demand that the gas

be piped to Timor for processing. Woodside executives, who have intimate connections with both the Labor and Liberal parties in Australia, have insisted they will only consider a floating processing facility that would maximise the company's profits while denying East Timor thousands of desperately needed jobs.

Prime Minister Tony Abbott's government has refused all offers of compromise. Attorney General George Brandis, who personally authorised the ASIO raids, has refused to return legal documents seized. Earlier, Brandis warned that Collaery, as well as the ex-ASIS officer, could be charged with disclosing official secrets, offences that could lead to up to seven years' imprisonment.

On December 13, Australian Federal Police detained Palmira Pires, sister of Timorese Petroleum Minister Alfredo Pires and Finance Minister Emilia Pires, at Darwin airport after she allegedly brought undeclared currency into Australia. The police confiscated mobile phones, sim cards, an iPad and memory sticks, demanding that Pires provide passwords to the devices, which she told the media contained correspondence with her siblings. Pires denied having undeclared cash in her luggage and accused the AFP of staging a "politically motivated" operation.

Former Foreign Minister Alexander Downer has issued a thinly-veiled threat of a foreign investment strike if the Timorese government pursues its case in the ICJ. Accusing Dili of using The Hague to bolster its case for the development of Greater Sunrise, Downer told the *Australian*: "They are entitled to pursue this strategy. But I think it has a downside and that is it increases the perception of sovereign risk for business dealing with East Timor."



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