

Australian government defends seizure of East Timor's documents

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23 January 2014

Appearing before the International Court of Justice (ICJ) in The Hague over the past three days, the Australian government's representatives aggressively asserted Canberra's "right" to steal, via police raids, sensitive East Timorese government documents.

East Timor took Australia to the international court after the Australian government refused to hand back material—including confidential correspondence with lawyers and advice from international legal experts—seized by the Australian Security Intelligence Organisation (ASIO) when it raided the offices of East Timor's Australian-based lawyer, Bernard Collaery, last month.

East Timor is seeking an urgent order for Australia to deliver to the court the material seized from Collaery's premises and destroy any copies. Collaery is representing Dili in an application to the Permanent Court of Arbitration, another judicial body in The Hague, to nullify an oil and gas revenue-sharing treaty because of Australian eavesdropping operations during negotiations between the two countries in 2004.

Throughout the ICJ hearing that concluded last night, Australia's legal counsel brazenly sought to turn reality on its head. They accused East Timor of "encouraging the commission" of a serious crime against Australia's "national security." The "crime" supposedly consisted of exposing the fact that Australia's intelligence apparatus illegally bugged Dili's cabinet offices.

The seized documents contain evidence that, acting on the orders of the then Australian Foreign Minister Alexander Downer, Australian Secret Intelligence Service (ASIS) personnel surreptitiously installed listening devices in Timorese government offices—while posing as aid workers helping to construct and renovate public buildings.

Prime Minister Tony Abbott's government also

cancelled the passport of a former ASIS technical operations director—a prime witness involved in the 2004 operation—preventing him from going to Holland to testify in person. Australian Attorney General George Brandis then went further, warning that Collaery, as well as the retired ASIS whistleblower, could be charged with disclosing official secrets, offences that could lead to up to seven years' imprisonment.

As a result of the 2004 espionage, and its colonial-style bullying of the tiny impoverished country, the Australian government secured 50 percent of the revenues from the \$40 billion Greater Sunrise gas project in the Timor Sea and deferred the setting of a maritime boundary for 50 years.

Under recognised international law, the border would be midway between the two coast lines, placing Greater Sunrise in East Timor's territory. In 2002, however, Canberra unilaterally declared it would no longer submit to maritime boundary rulings by the ICJ and the International Tribunal for the Law of the Sea.

The ASIO raids caused widespread outrage in East Timor, compelling Prime Minister Xanana Gusmao's government to publicly condemn Australia and launch the ICJ case to contest the violation of its national sovereignty.

East Timor's UK ambassador Joaquim da Fonseca, appearing before the court on Monday, said relations between the two countries were "close and friendly," but the seizure of documents "in complete disregard and disrespect of our sovereignty" caused "deep offence and shock in my country."

An international lawyer representing East Timor, Sir Elihu Lauterpacht, told the ICJ the case aimed "to prevent with immediacy Australia from deriving any further benefit from the internationally illegal seizure"

of the documents.

Lauterpacht said Collaery's office had been working on many files on behalf of the East Timorese government and they were therefore its property. "This is fully in line with the generally accepted proposition that the client, in this case the government, has proprietary ownership of documents" created or received on the client's behalf.

Delivering Canberra's response on Tuesday, Australia's legal team issued inflammatory and intimidating accusations against East Timor, including the totally unsubstantiated allegation that it encouraged the ex-ASIS officer to commit a crime. "To place classified information in the hands of a foreign state is a serious wrong to Australia," Justin Gleeson SC told the court.

Gleeson further declared that Lauterpacht, East Timor's chief advocate, had been "frankly, offensive" by calling into question a meaningless undertaking offered by Attorney General Brandis not to read East Timor's documents or permit them to be used, except for "national security" purposes.

Another Australian representative, University of Cambridge law professor James Crawford, accused East Timor of initiating the ICJ case purely for publicity purposes, effectively denying that East Timor had the right to defend itself legally in public court.

Australia's lawyers also advanced a far-reaching claim to override the centuries-old principle of lawyer-client confidentiality. Gleeson said legal professional privilege did not apply where the communications were produced in the pursuance of a criminal offence, fraud or other improper purpose, such as disclosing "national security information of Australia."

This claim has far-reaching implications for basic legal and democratic rights, both domestically and internationally. On this basis, any lawyer could be raided, and threatened with prosecution, for representing a client accused of criminal offences. Legal professional privilege exists precisely for the purpose of preventing such police-state measures against those facing trial, and their lawyers. This bedrock protection stops lawyers from being forced to pass on to the government and its security apparatus any sensitive or potentially incriminating information obtained while giving legal advice.

Gleeson's assertion is in line with Attorney General

Brandis's threat, in a ministerial statement to the Senate last month, to overturn lawyer-client confidentiality in order to charge Collaery with divulging official secrets. (See: "Australian government threatens lawyer with charges over Timor spying revelations")

The courageous stand taken by former US National Security Agency (NSA) contractor Edward Snowden has exposed the extent of the NSA's vast global spying operations and also the intimate involvement of Australian intelligence agencies. Australian diplomatic missions throughout the Asia-Pacific, including in East Timor, Indonesia and China, function as NSA listening posts.

The belligerent response of the Abbott government to the East Timor spying revelations expresses both its arrogant neo-colonial attitude to East Timor and its determination to intimidate anyone else who might expose the intrigues and criminal activities of Australian intelligence apparatus throughout the region. Already, it has been reported that three more whistleblowers have given statements to the East Timorese government about the illegal installation of bugging devices in Dili.



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