

International court permits Australian seizure of Timor's documents

Mike Head
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The International Court of Justice (ICJ) in The Hague on Monday effectively sanctioned Australia's seizure of sensitive documents last December when one of its intelligence agencies raided the offices of a Canberra lawyer representing East Timor.

The ruling by a panel of 16 judges also serves to protect the operations of Australia's US-backed spying network in the Asia-Pacific region. The documents and other data that Australia confiscated relate directly to its illegal bugging of the East Timorese government's ministerial offices during negotiations of an oil and gas revenue-sharing treaty in 2004.

East Timor went to the international court after the Australian government refused to hand back material—including confidential correspondence with lawyers—seized by the Australian Security Intelligence Organisation (ASIO) in a raid on the offices of East Timor's Australian legal representative, Bernard Collaery, on December 3.

Collaery is representing Dili in an application to the Permanent Court of Arbitration, another judicial institution in The Hague, to nullify the oil and gas treaty, precisely because of the Australian eavesdropping operations in 2004.

The ICJ dismissed an application by East Timor for a declaration that the seizure of the material violated its sovereignty and international law, and an order for Australia to immediately return all the data, and destroy any copies. Dili further sought a formal apology and compensation, and an order that Australia must not intercept communications between East Timor and its legal advisers.

Instead, the judges issued a meaningless declaration that Australia keep the material under seal until a further decision of the court, and ensure that it not be used "to the disadvantage of Timor-Leste." It directed

Australia not to "interfere" in communications between East Timor and its lawyers.

Australian Attorney-General George Brandis quickly welcomed the verdict. He said the Australian government was "pleased" with the decision "refusing Timor-Leste's application for the delivery up of the documents taken into possession by ASIO." Brandis crowed that it was a "good outcome for Australia."

The judges declared that they had "no reason" not to believe Brandis's written undertaking, offered during a three-day hearing in January, not to use the material "for any purpose other than national security purposes." The court declared: "Once a State had made such a commitment concerning its conduct, its good faith in complying with that commitment is presumed."

In reality, Australian governments, Labor and Liberal-National alike, have consistently displayed "bad faith" toward East Timor, in particular to secure the lion's share of the oil and gas reserves in the Timor Sea. In 2004, the Howard government's foreign minister, Alexander Downer, ordered Australian Secret Intelligence Service (ASIS) personnel to install listening devices in Timorese government offices—while posing as aid workers helping to construct and renovate public buildings.

This illegal surveillance was just part of a concerted campaign of economic and diplomatic bullying by Canberra, from the day that it sent troops to occupy the territory in 1999, and long after nominal independence was granted in 2002. The Timorese leadership was coerced into dropping its request for a demarcation of the maritime border between the two countries in line with international law, which would have allocated East Timor the majority share of the undersea oil and gas fields. The chief beneficiaries were Woodside Petroleum and other Australian, US and European

energy conglomerates, which secured the rights to mine the reserves.

Any “assurance” by Canberra and its spy agencies to seal the material and not use it “to the disadvantage of Timor-Leste” is worthless. In all likelihood, the documents and data have already been poured over, extracting every piece of information that will assist the Australian government to defeat East Timor’s treaty challenge, and any future claims by Dili to establish a valid maritime border.

In any case, the Australian government’s undertaking to only use the stolen material for “national security purposes” leaves the door wide open. The very fact that ASIS was instructed to bug the Timorese government during the oil and gas talks demonstrates that Canberra’s interpretation of “national security” includes economic espionage on behalf of Australian big business.

Despite having its application dismissed, Prime Minister Xanana Gusmao’s government claimed that it too had a victory in The Hague. East Timor’s Ambassador to Britain, Joaquim Da Fonseca said he was happy with the decision that the documents be kept sealed. “The court appreciates the seriousness of the harm that could be caused by the seizure and detention of the documents which belong to Timor Leste,” he insisted.

The judges acknowledged that East Timor’s right to conduct legal proceedings would “suffer irreparable harm if Australia failed to immediately safeguard the confidentiality of the materials seized by its agents.” But they carefully stopped short of making any order against Australia that would halt that “irreparable harm.”

Under the 2006 oil and gas treaty, 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. By international law, Greater Sunrise should be in East Timor’s territory. However, Canberra had declared in 2002 that it would no longer submit to maritime boundary rulings by the ICJ and the International Tribunal for the Law of the Sea.

Monday’s ruling underscores the role of the ICJ and other UN judicial bodies, such as the International Criminal Court, in shielding the interests and operations of the imperialist powers, particularly the

US and its allies, while providing a façade of “justice.”

Throughout the ICJ hearing in January, Australia’s legal counsel aggressively asserted Canberra’s “right” to steal, via police raids, such crucial documents, and even 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 ASIS planted listening devices in Dili’s cabinet offices.

As well as storming into Collaery’s office, ASIO raided the home of a former ASIS officer who planned to testify in The Hague about the bugging operation. Prime Minister Tony Abbott’s government then revoked his passport, preventing him from flying to The Hague.

In another threat to basic legal and democratic rights, Attorney-General Brandis warned 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. This would set a far-reaching precedent for overturning lawyer-client confidentiality, a core protection against arbitrary state power.

The Abbott government’s belligerent response to the East Timor spying revelations demonstrates both its colonial-style attitude to East Timor and its ruthless determination to stop anyone who might expose the criminal activities of the Australian intelligence apparatus throughout the region.

As the documents released so far by US National Security Agency (NSA) whistleblower Edward Snowden have already proven, Australia’s spy agencies are central to the NSA’s vast global surveillance operations, with Australian diplomatic missions, including in East Timor, Indonesia and China, functioning as NSA listening posts.



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