

## **ASIO Took It – But Was It Timor’s or Australia’s?**

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<http://www.theglobalmail.org/feature/asio-took-it-but-was-it-timors-or-australias/815/>

Apparently in international law as in life, the most important things get hidden in plain view. And so it was that on Tuesday in The Hague, an International Court of Justice judge from Somalia – a tiny impoverished land that in recent times has come to know a thing or two about how people get away with nicking other people’s stuff – cut to the chase in the case being heard over Australia’s raid last month on the office of East Timor’s Canberra lawyer, Bernard Collaery.

Dr Abdulqawi Ahmed Yusuf’s question was clear and simple: “To whom did the individual items listed in the ASIO property seizure record of 3 December 2013 and their content belong at the time of the seizure?”

Posed amid the rarefied climes of The Hague’s Peace Palace, at the end of two long-winded days of submissions from a barristocracy reaching for all manner of arcane international precedents to support sharply polarised arguments, Judge Yusuf’s question was refreshingly uncomplicated, and almost naïve among ‘learned friends’ who make their living spouting hundreds of words when a few would suffice.

To an Australian ear, the innocence was made all the more so by Judge Yusuf spelling out the acronym for the Australian Security Intelligence Organisation as “Ay-Ess-Eye-Oh”, a moniker by which the organisation is unknown in Australia. Surely some ICJ legal intern could’ve told him our bumbling spooks are most commonly referred to as “Ayseo”, and sometimes “Arseo”.

But Judge Yusuf’s was the right question, and the polyglot judge could’ve asked it in any of his five official languages – Somali, Arabic, Italian, French or English. Basically, he was asking whether big, rich Australia had pinched stuff that belonged to tiny, poor East Timor. The court gave the combatants the rest of this week to answer the Somali judge.

While East Timor will doubtless reiterate that Australia did pinch its stuff, Australia provided some idea of its response before Judge Yusuf had even asked the question.

Australia’s Solicitor-General Justin Gleeson had already told the court that East Timor may have perpetrated a little pilfering of its own, by allegedly obtaining Australia’s classified information from a rogue former spy from the Australian Secret Intelligence Service, ASIS, who has claimed that Australia bugged East Timorese officials during 2006 negotiations over oil and gas resources in the Timor Sea.

He said this had prompted ASIO’s December 3 swoop which is at the core of the matter, a raid which Gleeson said had been authorised in a well-considered “personal decision” by Australian Attorney-General George Brandis. “We do not believe in ambush,” Gleeson said. “To place classified information in the hands of a foreign state is a serious wrong to Australia,” Gleeson told the court. “Timor-Leste may be encouraging the commission of that crime.”

It’s believed that the material – a laptop, USB-stored files and reams of documents – seized from Collaery’s office last month, details allegations heard in court that Canberra bugged and spied on Dili during the treaty talks.

Dili wants that 2006 treaty voided because, it claims, Australia obtained advantage by espionage. It brought that grievance before The Hague’s in camera Permanent Court of Arbitration (PCA)

last month, but launched this more public case before the ICJ following the ASIO raid, which occurred two days before the related PCA case was to commence.

On Monday, East Timor's counsel told the court it was concerned Australia would improperly use the seized material in any new negotiations between the two countries. But in yesterday's lawyerly session that contrasted to Monday's relative courtroom bonhomie, Australia yesterday dismissed those concerns as unfounded and, indeed, offensive.

Gleeson told the court that Brandis had made a new and broader undertaking overnight to contain the seized material, vowing he would not even read them himself. The documents and data, Gleeson claimed, would not be available to anyone in government for any purpose apart from the protection of national security.

Gleeson continued by saying that East Timor's chief advocate, the British silk Sir Elihu Lauterpacht, had impugned Brandis's integrity and conduct with his "inflammatory" questioning of Brandis' sincere intention to abide by this undertaking over the seized documents. Sir Elihu's remarks were, Gleeson claimed, "frankly, offensive".

It would also be a "quantum leap" by the court, Gleeson said, to agree with East Timor's assertion on Monday that ASIO's seizing of the documents was akin to an invasion of sovereign territory.

As for Sir Elihu's Monday observation that Australia's sovereign regard for accepted international standards in law and behaviour had deteriorated dramatically since he worked as a lawyer for Canberra in the mid-1970s, John Reid, Australia's formal agent before the court, said that assertion was "wounding". Brandis, he said, had given the matter his "most conscientious attention".

The case continues in The Hague on Wednesday, when both sides submit their second and final round of oral evidence in open court.