

## **Timor-Leste rejects 'outrageous' claim in Australian spying dispute**

Daniel Hurst – *The Guardian* - 23 January 2014

<http://www.theguardian.com/world/2014/jan/23/timor-leste-rejects-outrageous-slur-australian-spying-dispute>

Timor-Leste has told the international court of justice it rejects the “careless and outrageous” suggestion it was encouraging the violation of Australian laws about intelligence secrets, as Australia warned lives could be put at risk by the disclosures.

In their final arguments to the UN court in The Hague, Timor-Leste and Australia disagreed over the adequacy of undertakings given by the Australian attorney general George Brandis that documents seized from Timor-Leste’s Canberra-based lawyer on 3 December would not be used for any matter other than national security.

Australia’s legal team said the raid by the Australian Security Intelligence Organisation (Asio) was motivated by real concerns that a former officer of the Australian Secret Intelligence Service (Asis) had disclosed the identities of serving or former officers, potentially endangering them and their families.

Timor-Leste has said it has irrefutable proof that Australia bugged the country’s cabinet room to gain an unfair advantage in the lead-up to a 2006 agreement extending the length of a crucial oil and gas treaty. Those claims are being examined by a separate arbitration tribunal.

Timor-Leste is seeking urgent orders from the UN court that Australia surrender the documents seized from the offices of its Canberra-based legal adviser, Bernard Collaery, to prevent further harm ahead of a proper examination of the case at a later date. Australia argues the provisional measures sought by Timor-Leste are unnecessary, in part because of the “comprehensive” undertakings designed to address the country’s concerns.

Sir Elihu Lauterpacht, for Timor-Leste, acknowledged the right of a state to protect itself, but asked whether Australia was “protecting itself from the likely revelation that Australia’s security seriously and illegally entered Timor-Leste under false pretences” and “surreptitiously placed devices in the government offices of Timor-Leste, eavesdropped, and extracted information to which they were not entitled”.

During Wednesday’s closing arguments, Lauterpacht reaffirmed Timor-Leste’s claim that it owned the documents that were seized on 3 December.

Timor-Leste’s ambassador to the UK, Joaquim da Fonseca, told the court he objected to Australia’s suggestion that Timor-Leste may be encouraging the commission of crime that threatened Australia’s national security.

“My government is committed to pursue justice in this court. It is equally committed to pursue mutual interests between Timor-Leste and Australia through broader bilateral co-operation. Such expression of distrust falls short of a recognition and appreciation of our broader relationship. I must firmly reject this careless and outrageous suggestion,” he said.

But Australia’s solicitor general, Justin Gleeson SC, said he had expressed his concerns as a “reasonable apprehension” rather than an assertion of fact. Gleeson pointed to news reports and interviews which suggested disclosures had been made

about the identities of Australian intelligence officers and operations.

“The first proposition is that Mr Collaery, as agent for Timor-Leste, has received into his possession a witness statement and affidavit from a former Asis officer who I will for convenience label as X,” Gleeson said.

“The second is that although the precise content of that document is not known to us it is apparent from what Mr Collaery has said publicly that the subject matter contains information relevant to an alleged operation of Asis in Dili in 2004, which would be information caught by section 39. The third, perhaps even more concerning, is that Mr Collaery as agent for Timor-Leste has chosen to republish that information, the information he says was obtained from the agent widely in the media in Australia, thereby accessible throughout the region and the world.

“The fourth is that Timor-Leste proposes to tender and rely upon documents which would appear to be these same disclosures as its evidence in the arbitration. The fifth is that Timor-Leste has argued vigorously that the arbitration should not be subject to confidentiality so that the claims should be made further public.

“The sixth and last point which is of particular concern to Australia is that there is an apprehension that Timor-Leste through Mr Collaery, having obtained information from X, has used that information as a basis as a springboard ... from which to make further enquiries, the result of which it now says publicly has led it to identify four persons who it says were involved in an operation against Timor-Leste in 2004. It further has said publicly it now accepts there is a risk to the safety of those persons because they have been identified and if their names were revealed publicly.”

Gleeson said he was not saying senior Timor-Leste officials had an intention to publish the names of officers or harm the lives of those persons.

“But I trust you will now see we have a situation where Australia is being asked to accept that the conscience of Mr X, the conscience of Mr Collaery, and the conscience of senior Timorese officials is to be the guard of the safety of Australian lives and Australian security information. I must say to you ... that is unacceptable.”

The Australian legal team was asked why the search warrants were executed on 3 December, several days before the arbitral hearing. Gleeson said this was because Australia had information about a real risk that X had made disclosures of information to Collaery, would make further disclosures, might leave Australia within a matter of days with no certainty of return, and might destroy documents or data relating to such disclosures.

This led to the cancellation of X’s passport and the execution of warrants on X’s premises and on Collaery’s premises.

Lauterpacht said it was “a cause of regret” that he should have offended the Australian government and former colleagues when he remarked on Monday that standards had slipped since the time he worked as a senior official in the Department of Foreign Affairs in the 1970s.

“If I may have sounded harsh, there was no intention to hurt; but the word ‘inexplicable’ was the only word I could think of to describe the what and the why and the when of the seizure of the property in Canberra – property belonging to the government of Timor-Leste,” Lauterpacht said. Lauterpacht said in balancing the interests at stake in this matter, Australia placed all the

emphasis on its own interests. Noting Australia had made “indirect threats” aimed at Collaery and a witness, Lauterpacht said it was possible a prosecution could be started in Timor-Leste against those responsible for the bugging operation.

He said Brandis’s undertakings on the non-use of the materials for anything other than national security and criminal prosecutions “should be backed up by an order of the court”. The court will make a decision on Timor-Leste’s request for provisional orders on a date to be announced. Gleeson said Asio had sealed the documents pending the outcome.