

East Timorese government prepares legal case over Australian spying

By Patrick O'Connor
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Amid an ongoing diplomatic crisis between Canberra and Jakarta over phone-tapping, the East Timorese government this week confirmed that it will tender evidence in The Hague of illegal Australian espionage operations. This will form part of East Timor's efforts to revise a treaty sanctioning Australia's unlawful claim to lucrative oil and gas revenues in the Greater Sunrise undersea fields.

The espionage allegations have been raised previously. Earlier this year the Timorese government said that in 2004, during negotiations for the Certain Maritime Arrangements in the Timor Sea (CMATS) treaty, Australian Secret Intelligence Service (ASIS) agents broke into government and prime ministerial offices in Dili and planted listening devices.

"It was a carefully premeditated, involved, very lengthy operation with premeditated breaches of the Vienna Convention on the Law of Treaties, and premeditated breaches of the Vienna Convention on Diplomatic Relations," Bernard Collaery, a barrister and former Australian Capital Territory attorney-general, told the *Australian* in May. "This is a criminal conspiracy, a break-in on sovereign territory and a breach of Australian law."

The Timorese government also accused Canberra of bribing members of its negotiating team, and tapping into their mobile phones.

Agio Pereira, president of Timor's Council of Ministers and a close adviser to Prime Minister Xanana Gusmão, told the Australian ABC yesterday that "compelling evidence" would be submitted to the Permanent Court of Arbitration in The Hague next week. "Insider trading in Australia is a crime," Pereira said. "It's more than unfair, it actually creates incredible disadvantage to the other side and according to international law, the Vienna Convention and the law of treaties, you're supposed to negotiate in good faith."

The arbitration panel will take six months to assess the terms of the CMATS treaty. It involves three jurists, one appointed by Canberra (Yale professor Michael Reisman), one by Dili (former British Supreme Court judge Lawrence Collins) and another agreed to by both countries (Tullio Treves, University of Milan professor and former judge of the International Tribunal for the Law of the Sea).

The case will proceed as material continues to emerge from former US National Security Agency (NSA) contractor Edward Snowden, detailing the criminal role played by successive Labor and Liberal governments in Australia, as one of Washington's "Five Eyes" intelligence partners. Last month it was revealed that Dili was one of several Asian capitals in which the Australian Signals Directorate (ASD) conducted electronic surveillance operations from within embassies, as part of a NSA program codenamed STATEROOM.

Former Australian Foreign Minister Alexander Downer yesterday again contemptuously refused to confirm or deny the allegations of espionage that occurred during his time in office. "The reason they [the Timorese government] have come out and repeated this claim is tied up with Indonesia and the controversy there, to get themselves more publicity," he declared.

Timorese Prime Minister Gusmão denounced the US-Australian spying operations in a speech to the Bali Democracy Forum in Indonesia on November 7. "Either we are in the presence of an extreme distrust where everyone is a potential enemy, or we are witnessing the fraudulent use of technology to obtain economic advantage over others, which is even more immoral when those others are weak and small," he declared.

The statements underscore the heightened diplomatic tensions throughout the Asia-Pacific generated by the NSA revelations.

In 1999, the former Howard government dispatched a US-backed Australian military force to the formerly Indonesian-controlled East Timor, overseeing a transition to so-called independence. This operation, which was enthusiastically backed by the Australian pseudo-left groups and promoted as a “humanitarian intervention,” was a predatory drive aimed at maintaining Australian imperialism’s control over the Timor Sea’s oil and gas resources. In 2006, Canberra again militarily intervened after helping to instigate a split in the state’s armed forces, as part of a regime change operation against Prime Minister Mari Alkatiri. The Fretilin leader was regarded in Canberra as too closely aligned with rival powers Portugal and China.

With Australian government and military backing, Gusmão was installed as prime minister in 2007. He closely collaborated with Canberra during the regime change operation, and was regarded as the figure in Dili most sympathetic to Australian imperialism’s strategic and economic interests. In 1998, when he was imprisoned in Jakarta as a pro-independence guerrilla commander, Gusmão met with Australian BHP executives and assured them that no international oil and gas companies with stakes in the Timor Sea would lose out under an “independent” East Timor.

In recent years, however, Gusmão has used the growing economic and strategic weight of China as a counterbalance to Australia’s domination over the impoverished country, including by expanding ties between the Timorese military and the Peoples Liberation Army.

Gusmão has also adopted a stronger line on the Timor Sea arrangements. This reflects the growing desperation of the entire East Timorese ruling elite, amid continued stalling by Australia’s Woodside Petroleum on the Greater Sunrise project. Timor is the most oil- and gas-dependent state in the world, with 95 percent of government revenue coming from royalties. Most of this revenue derives from a single project in the Timor Sea, Bayu-Undan, operated by US giant ConocoPhillips, and this is expected to run dry within the next decade.

Development of Greater Sunrise, which has far larger reserves than Bayu-Undan, is crucial to maintain any semblance of viability for the tiny Timorese state. Under accepted international law, the maritime border between Australia and East Timor ought to be equidistant between the two states, leaving all of Greater Sunrise in East Timor. Under the CMATS treaty, however, Canberra bullied Dili into shelving any resolution of a maritime border in the area for 50 years, at the same time dividing oil and gas revenues on a 50-50 basis.

A consortium with the rights to develop the fields involves ConocoPhillips, Shell and Osaka Gas, but is headed by Woodside Petroleum, which has refused to accede to Timorese government demands that gas be piped to and be processed in Timor. This would generate desperately needed jobs in Timor, but Woodside instead wants to build a cheaper floating processing facility. Moreover, the massive expansion of the US coal seam gas sector in recent years has transformed the global gas industry, and many energy experts have questioned whether Woodside is still interested in investing the estimated \$18 billion required to commence extraction. Last August, the Timorese government offered to contribute \$800 million toward the cost of a processing pipeline to southern Timor, but this was dismissed by Woodside executives.

The Gusmão government has threatened to revoke the Woodside-led consortium’s rights to Greater Sunrise, and has claimed that rival Asian energy companies have expressed interest in the project. It has not, however, exercised its right to annul the CMATS treaty. The arbitration case in The Hague appears aimed at adding greater pressure on Canberra.

The tendering of documentary evidence of the Australian intelligence agencies’ illegal operations is nevertheless likely to heighten the diplomatic and political crisis confronting the Australian government in Asia, as more NSA material continues to emerge detailing US-Australian spying activities throughout the region.