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Timor action unwise: Downer

JOE KELLY THE AUSTRALIAN DECEMBER 20, 2013 12:00AM



Protesters hold up signs during Anti-Australia protests on December 6, 2013 in Dili, East Timor. Source: Getty Images

FORMER foreign minister Alexander Downer has cautioned East Timor it risks damaging its international reputation as it initiates a new legal action alleging that recent seizures conducted by Australian intelligence authorities represented a violation of its sovereignty.

Earlier this month, Attorney-General George Brandis approved a raid on the legal practice of Australian lawyer Bernard Collaery who is representing East Timor in a contentious arbitration hearing over the operation of a treaty governing the apportionment of the \$40 billion Greater Sunrise gasfield. The premises of an experienced former Australian Secret Intelligence Service officer turned whistleblower were also raided.

The former officer had his passport seized, preventing him from acting as a witness for Collaery in The Hague in a case alleging that Australian intelligence authorities gained an unfair advantage in the 2004 negotiations by breaking into the government offices in Dili and bugging the Timorese cabinet room.

East Timor has now instituted separate proceedings in the UN's top court - the International Court of Justice - over the seizure of documents and electronic media during the raid on Collaery's office.

Opposition legal affairs spokesman Mark Dreyfus yesterday said the new legal action had arisen partly because the Attorney-General had misjudged the reaction of the international community to the raids.

Mr Dreyfus hoped the separate action would not have knock-on effects on Australia's case in the matter being hosted by the Permanent Court of Arbitration over the operation of the Certain

Maritime Arrangements in the Timor Sea Treaty.

"It is concerning that the actions of Senator Brandis have led to East Timor taking Australia to the International Court of Justice in a new legal action.

"In announcing the execution of the warrants in the way that he did, Senator Brandis failed to appreciate how Australians and the wider international community would view the timing of the seizures on the eve of an international arbitration," he said. "I hope that Senator Brandis has not prejudiced Australia's position in the international arbitration."

Mr Downer yesterday defended the negotiation of the Certain Maritime Arrangements in the Timor Sea Treaty as a more beneficial arrangement to East Timor. He said it meant that, outside of the agreed Joint Petroleum Development Area with Australia, East Timor was entitled to a 50:50 split of the proceeds rather than a 20:80 split as under the former treaty.

Only a small portion of the Greater Sunrise fields were located in the joint development area in which East Timor was entitled to a 90:10 per cent split.

"The present East Timorese government said 'well, we think this treaty is unfair'. What they want is the gas to be landed in East Timor and they think by going through this current exercise that makes it more likely," Mr Downer said. "They are entitled to pursue this strategy. But I think it has a downside and that is it increases the perception of sovereign risk for business dealing with East Timor."

Professor of international law Don Rothwell said the new legal action would require Australia to appoint an ad hoc judge to the case, an unusual proceeding.