Non corrigé
Uncorrected

CR 2014/4

International Court of Justice

THE HAGUE

Cour internationale de Justice

LA HAYE

YEAR 2014

Public sitting

held on Wednesday 22 January 2014, at 5 p.m., at the Peace Palace,

President Tomka presiding,

***in the case concerning* Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste *v.* Australia)**

VERBATIM RECORD

ANNÉE 2014

Audience publique

tenue le mercredi 22 janvier 2014, à 17 heures, au Palais de la Paix,

sous la présidence de M. Tomka, président,

***en l'affaire relative à des* Questions concernant la saisie et la détention de certains documents et données (Timor-Leste c. Australie)**

COMPTE RENDU

Present:	President	Tomka
	Vice-President	Sepúlveda-Amor
	Judges	Owada
		Abraham
		Keith
		Bennouna
		Skotnikov
		Cançado Trindade
		Yusuf
		Greenwood
		Xue
		Donoghue
		Gaja
		Bhandari
	Judges *ad hoc*	Callinan
		Cot
	Registrar	Couvreur

Présents : M. Tomka, président
M. Sepúlveda-Amor, vice-président
MM. Owada
Abraham
Keith
Bennouna
Skotnikov
Cançado Trindade
Yusuf
Greenwood
Mmes Xue
Donoghue
M. Gaja
M. Bhandari, juges
MM. Callinan
Cot, juges *ad hoc*

M. Couvreur, greffier

The Government of Timor-Leste is represented by:

H.E. Mr. Joaquim A.M.L. da Fonseca, Ambassador of the Democratic Republic of Timor-Leste to the United Kingdom,

as Agent;

H.E. Mr. José Luís Gutteres, Minister for Foreign Affairs and Co-operation;

H.E. Mr. Nelson dos Santos, Ambassador of the Democratic Republic of Timor-Leste to the Kingdom of Belgium and the European Union;

*

Sir Elihu Lauterpacht, C.B.E., Q.C. Honorary Professor of International Law, University of Cambridge, member of the Institut de droit international, member of the English Bar,

Mr. Vaughan Lowe, Q.C., Emeritus Professor of International Law, University of Oxford, member of the English Bar,

Sir Michael Wood, K.C.M.G., Member of the International Law Commission, member of the English Bar,

as Counsel and Advocates;

Ms Janet Legrand, Partner, DLA Piper UK LLP,

Ms Emma Martin, Associate, DLA Piper UK LLP,

Ms Jolan Draaisma, Senior Associate, Collaery Lawyers,

Mr. Andrew Legg, Ph.D., member of the English Bar,

as Counsel;

Mr. Andrew Sanger, Lauterpacht Centre for International Law, University of Cambridge,

Mr. Eran Sthoeger, LL.M., New York University School of Law,

as Junior Counsel;

Mr. Bernard Collaery, Principal, Collaery Lawyers,

as Advisor.

Le Gouvernement du Timor-Leste est représenté par :

S. Exc. M. Joaquim A.M.L. da Fonseca, ambassadeur de la République démocratique du Timor-Leste auprès du Royaume-Uni,

comme agent ;

S. Exc. M. José Luís Guterres, ministre des affaires étrangères et de la coopération de la République démocratique du Timor-Leste ;

S. Exc. M. Nelson dos Santos, ambassadeur de la République démocratique du Timor-Leste auprès du Royaume de Belgique et de l'Union européenne ;

*

sir Elihu Lauterpacht, C.B.E., Q.C., professeur honoraire de droit international à l'Université de Cambridge, membre de l'Institut de droit international, membre du barreau d'Angleterre,

M. Vaughan Lowe, Q.C., professeur émérite de droit international à l'Université d'Oxford, membre du barreau d'Angleterre,

sir Michael Wood, K.C.M.G., membre de la Commission du droit international, membre du barreau d'Angleterre,

comme conseils et avocats ;

Mme Janet Legrand, associée au Cabinet DLA Piper UK LLP,

Mme Emma Martin, collaboratrice au Cabinet DLA Piper UK LLP,

Mme Jolan Draaisma, collaboratrice principale au Cabinet Collaery Lawyers,

M. Andrew Legg, Ph.D., membre du barreau d'Angleterre,

comme conseils ;

M. Andrew Sanger, Lauterpacht Centre for International Law de l'Université de Cambridge,

M. Eran Sthoeger, LL.M, Faculté de droit de l'Université de New York,

comme conseils auxiliaires ;

M. Bernard Collaery, associé principal, Cabinet Collaery Lawyers,

comme conseiller.

The Government of Australia is represented by:

Mr. John Reid, First Assistant Secretary, International Law and Human Rights Division, Attorney-General's Department,

as Agent;

H.E. Mr. Neil Mules, A.O., Ambassador of Australia to the Kingdom of the Netherlands,

as Co-Agent;

Mr. Justin Gleeson, S.C., Solicitor-General of Australia,

Mr. James Crawford, A.C., S.C., F.B.A, Whewell Professor of International Law, University of Cambridge, member of the Institut de droit international, Barrister, Matrix Chambers, London,

Mr. Bill Campbell, Q.C., General Counsel (International Law), Attorney-General's Department,

Mr. Henry Burmester, A.O., Q.C., Special Counsel, Australian Government Solicitor,

as Counsel and Advocates;

Mr. Chester Brown, Professor of International Law and International Arbitration, University of Sydney, Barrister, 7 Selbourne Chambers, Sydney, and Essex Court Chambers, London,

Mr. Rowan Nicholson, Barrister and Solicitor, Supreme Court of South Australia, Research Associate, Lauterpacht Centre for International Law, University of Cambridge,

as Counsel;

Ms Camille Goodman, Principal Legal Officer, Attorney-General's Department,

Ms Stephanie Ierino, Senior Legal Officer, Attorney-General's Department,

Ms Amelia Telec, Senior Legal Officer, Attorney-General's Department,

Ms Esme Shirlow, Acting Senior Legal Officer, Attorney-General's Department,

Ms Vicki McConaghie, Legal Adviser, Attorney-General's Department,

Mr. Todd Quinn, First Secretary, Embassy of Australia in the Kingdom of the Netherlands,

Mr. William Underwood, Third Secretary, Embassy of Australia in the Kingdom of the Netherlands,

as Advisers;

Ms Natalie Mojsoska, Administration Officer, Attorney-General's Department,

as Assistant.

Le Gouvernement de l'Australie est représenté par :

M. John Reid, premier secrétaire adjoint, division du droit international et des droits de l'homme, services de l'*Attorney-General*,

comme agent ;

S. Exc. M. Neil Mules, A.O., ambassadeur d'Australie auprès du Royaume des Pays-Bas,

comme coagent ;

M. Justin Gleeson, S.C., *Solicitor-General* d'Australie,

M. James Crawford, A.C., S.C., F.B.A., professeur de droit international à l'Université de Cambridge, titulaire de la chaire Whewell, membre de l'Institut de droit international, *Barrister*, Matrix Chambers (Londres),

M. Bill Campbell, Q.C., *General Counsel* (droit international), services de l'*Attorney-General* d'Australie,

M. Henry Burmester, A.O., Q.C., *Special Counsel*, *Solicitor* du Gouvernement australien,

comme conseils et avocats ;

M. Chester Brown, professeur de droit international et d'arbitrage international à l'Université de Sydney, *Barrister*, 7 Selborne Chambers (Sydney) et Essex Court Chambers (Londres),

M. Rowan Nicholson, *Barrister* et *Solicitor* près la Cour suprême de l'Australie-Méridionale (Supreme Court of South Australia), attaché de recherche au Lauterpacht Centre for International Law de l'Université de Cambridge,

comme conseils ;

Mme Camille Goodman, juriste principal, services de l'*Attorney-General*,

Mme Stephanie Ierino, juriste hors classe, services de l'*Attorney-General*,

Mme Amelia Telec, juriste hors classe, services de l'*Attorney-General*,

Mme Esmee Shirlow, juriste hors classe par intérim, services de l'*Attorney-General*,

Mme Vicki McConaghie, conseiller juridique, services de l'*Attorney-General*,

M. Todd Quinn, premier secrétaire, ambassade d'Australie au Royaume des Pays-Bas,

M. William Underwood, troisième secrétaire, ambassade d'Australie au Royaume des Pays-Bas,

comme conseillers ;

Mme Nathalie Mojsoska, administrateur, services de l'*Attorney-General*,

comme assistante.

The PRESIDENT: Please be seated. The sitting is now open. The Court meets this afternoon to hear the second round of oral observations for Australia on the Request for the indication of provisional measures filed by Timor-Leste. My understanding is that the Solicitor-General of Australia, Mr. Gleeson, is going to open the arguments for Australia. You have the floor, Sir.

Mr. GLEESON:

Introduction

1. Thank you, Mr. President, Members of the Court. I will deal with all matters, save for plausibility, which Mr. Campbell will deal with. Let me start with one matter repeated by Sir Elihu this morning from Monday, namely his assertion that Australia committed an act of espionage against Timor-Leste in Dili in 2004. He asked Australia to admit and apologize for that act.

2. There are two problems with that request. The first is the allegation of espionage is not as issue before you, whereas it is an issue before the Tribunal. It should not be asserted in this Court as a fact when it is irrelevant. Australia neither confirms nor denies that allegation, as is its right. Second, it will not have escaped you this morning that, when the assertion was repeated, again no evidence was pointed to in support of it. We ask you to dismiss that matter from your mind as nothing more than an assertion to be considered elsewhere.

3. Might I say next that, as we did not hear much new this morning, I would propose to structure my address largely around the questions from the Court.

Adequate protection of the arbitration

4. Could I turn first to the topic of the Arbitration and to Judge Cancado Trindade's question[1], which I would seek to answer first at the level of principle and then at the level of application. At the level of principle, we would accept that, if a State engages in arbitration with another State, and finds it necessary to take measures of national security which may bear on the

[1]Judge Cancado Trindade: "*What is the impact of a State's measures of alleged national security upon the conduction of arbitral proceedings between the Parties? In particular, what is the effect or impact of seizure of documents and data, in the circumstances of the present case, upon the settlement of an international dispute by negotiation and arbitration?*"

arbitration, the State should, as a matter of prudence, if not strict law, take such steps as are reasonable to limit the impact of the national security measures on the arbitration. We accept, as was put this morning, that to do otherwise would interfere with arbitration as a peaceful method of resolving inter-State disputes. I emphasize, the principle is qualified by reasonableness. The circumstances may not always provide a perfect accommodation between the two interests in conflict and a State could not be asked absolutely to put on hold measures of national security merely because it is brought to arbitration.

5. That is the general answer. The specific answer is this: in the present case the measures of national security will have no adverse impact on this Arbitration — for three reasons. Firstly, Timor-Leste's counsel in the Arbitration, on 5 December, accepted they have copies of the key removed documents, including an affidavit from the person they describe as "Witness K" which they have lodged with the PCA[2]. No case of disadvantage has been made before you. Second, the Attorney-General acted reasonably from the outset — from the Ministerial Statement of 4 December, supplemented by undertakings[3] — to ensure there would be no illegitimate advantage to Australia by way of documents being made available to the legal team in the Arbitration. Wisely, with hindsight, he anticipated this problem might arise and he acted in advance to prevent it. The third part of the practical answer is that there is not a skerrick of evidence pointed to by Timor-Leste to suggest the undertakings have not been honoured to date or will not be honoured in the future. That is, the undertakings to protect the Arbitration. As you know, the documents have been kept under seal, out of respect for the President's request. The lawyers in the Arbitration have not and will not see them. Not even ASIO has seen them.

6. Now, you have not heard any substantive argument against those three points. To repeat, Timor-Leste has the documents it needs for the arbitration; it has adequate undertakings to protect the integrity of the arbitration; and the undertakings are being honoured.

---

[2]Transcript p. 85, lines 22-25 and p. 86, lines 1-7 (Lowe) (judges' folder, tab 42).

[3]Senator the Hon. George Brandis Q.C., Attorney-General, "Ministerial Statement: Execution of ASIO Search Warrants" (4 Dec. 2013), p. 1.

7. If Timor-Leste continues to maintain the proposition put by Sir Elihu on Monday, "it seems hardly likely that the materials have not been closely examined by Australian officials"[4], that proposition is without foundation and should be dismissed.

8. Nor, to conclude this point, should the Court take up the hint this morning that in the face of undertakings solemnly and consideredly given and binding on a State, you should nevertheless make orders.

9. It is clear from the Court's jurisprudence that undertakings are of a binding character. I reference the *Legal Status of Eastern Greenland* case[5].

10. The point was confirmed by the Court in the *Nuclear Tests* case *(Australia* v. *France)*[6]. That is the first matter I wish to address.

The Evidence Available to Australia

11. Let me turn then to the important question of the Vice-President this morning, which was: does Australia have evidence to support the proposition I put that Timor-Leste may be encouraging the commission of a crime under Australian law or otherwise infringing national security. If so, could we be more specific?[7]

12. The answer to the first question is "yes". As to the second question, may I start by noting that the proposition was carefully put at a level of a reasonable apprehension and not at a level of assertion of fact. Australia does not wish to assert anything more than is strictly necessary or appropriate to resolve this case. Within that framework, the answer I will now give as to the

---

[4]CR 2014/1, para 12 (Lauterpacht).

[5]*Legal Status of Eastern Greenland (Denmark* v. *Norway), Judgment, 1933, P.C.I.J., Series A/B, No. 53*, p. 71: "The Court considers it beyond all dispute that a reply of this nature by the Minster for Foreign Affairs on behalf of his Government in response to a request by the diplomatic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs."

[6]*Australia* v. *France, I.C.J. Reports 1974*, p 267, para. 43: "It is well recognized that declarations made by way of unilateral acts, concerning legal or factual situations, may have the effect of creating obligations. Declarations of this kind may be, and often are, very specific. When it is the intention of the State making the declaration that it should become bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding."

[7]*Does Australia have evidence supporting the proposition that Timor-Leste is encouraging the commission of crimes under Australian law or otherwise jeopardizing Australia's national security, as suggested by Mr Gleeson in his intervention of 21 January 2014 before the Court? If so, could Australia be more specific on this particular matter?*

evidence will need to balance two matters. Firstly, matters of national security, which limit what I can say. Secondly, a desire not to further inflame relations between our countries.

13. Let me then identify — so there is some precision in my answer — the crime that potentially is in question. One crime is under Section 39 of the Intelligence Services Act 2001 of the Commonwealth. It is a crime if a present or former officer of ASIS communicates information concerning the performance of the functions of ASIS acquired as an officer unless the approval of the Director General is obtained. And I emphasize, that is the qualification permitted under the Act. The second key provision is Section 41, which makes it a separate crime to make public the identity of officers of ASIS, or information from which identity can be inferred, again without the approval of the Director General.

14. A third party would encourage the commission of crime of this character if it took steps which sought to facilitate such communications or publications or sought to profit from them.

15. Turning now to the evidence to support what I have put as a matter of apprehension, not of fact, I will first identify seven propositions of evidence and then I will identify the materials which underpin them. And you will note in what I say that the primary focus of the apprehension hinges upon conduct done by Mr. Collaery as Agent for East Timor, as opposed to conduct done by the Timorese-Leste Government .

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

17. 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.

18. 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.

19. 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.

20. 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.

21. 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, to use a term of equity — 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. Those are the matters which underpin the concern that Australia, through me, expressed yesterday.

22. Could I then go to the detail, and I apologize that the judges' folder supplement has only just arrived, but we have been working during today on your question, Sir. What I will do is summarize the key material — the references in the judges' folder will be fully provided with the material I have given to the President and there will be perhaps three of these documents I will show you in particular. The detailed information, then, is this.

23. On 31 May 2013 in Timor-Leste's *Jornal Independente*[8], it was reported that Mr. Pires, Timor-Leste's Minister of Resources, alleged that ASIS had broken into and bugged East Timorese cabinet rooms during the negotiations of the CMATS Treaty. It was further reported that the revelations were brought to light by an ex-ASIS officer.

24. In that same article, Mr. Collaery — described as the lawyer at this stage for Minister Pires - was reported as confirming that the evidence of Australia's alleged conduct was "irrefutable"[9]. He was quoted as saying "Australian authorities are well aware that we are in a position to back that up".

25. On 8 June 2013, in an article in the *Economist*, the same Minister Pires is quoted as saying that Timor-Leste had "irrefutable proof" that during negotiations in 2004, Australia's secret services had illegally obtained information and that his lawyer — we would infer Mr. Collaery for

[8]Julio da Silva, "Xanana still Waiting for Response from Australia about CMATS", *Jornal Independente* (31 May 2013), p. 6 (judges' folder, tab 44).

[9]Julio da Silva, "Xanana still Waiting for Response from Australia about CMATS", *Jornal Independente* (31 May 2013), p. 6 (judges' folder, tab 44).

the reason previously cited — claimed the Timorese Prime Minister's offices were bugged[10]. Those matters relate to May and June of last year. I briefly referred you to those matters yesterday.

26. Could I then supplement those with what occurred immediately after the intelligence operation by ASIO in December, Mr. Collaery made public statements in the press regarding the evidence which was to be given by a person described as a former ASIS officer in the arbitration — and I want to be fairly precise in how I quote Mr. Collaery:

(a) On 3 December 2013, he said in an interview on the Lateline programme on the Australian Broadcasting Corporation (ABC) television, our Australian television network, that "this witness was the director of all technical operations with ASIS . . . a very senior, experienced, decorated officer". He went on to say "the evidence is available here in The Hague as I speak"[11].

(b) On the same day, he said in a further interview with the ABC that "the whistleblower's evidence . . . is here, it's abroad, it's ready"[12].

(c) On 4 December 2013, in an interview again with the ABC, he gave further details of the evidence to be given by a former ASIS officer, described as the prime witness in the arbitration proceeding. Extracts from the affidavit of the former ASIS official were quoted, which concerned instructions allegedly given to him by the head of ASIS[13]. Could I invite the Court to go to tab 48, and if our earnest work this afternoon has been successful it will be the right tab and, if not, I will apologize now. At tab 48, you will see the transcript and if you could go to page 2, to the material we have taken the liberty of highlighting only for ease of reference, you will see halfway down that Mr. Collaery — described here as lawyer for East Timor or therefore as Agent — publicly disclosed an assertion: "The newly arrived director of ASIS called the head of the technical area of ASIS to a meeting and, there, with his deputy, who I

---

[10]"Timor-Leste and Australia: Bugs in the Pipeline", *The Economist* (8 June 2013), available at: http://www.economist.com/news/asia/21579074-timorese-leaders-push-better-deal-their-offshore-gas-fields-bugs-pipeline (judges' folder, tab 45).

[11]"Bernard Collaery, Lawyer for East Timor", Lateline, ABC (3 December 2013), available at: http://www.abc.net.au/lateline/content/2013/s3904428.htm (judges' folder, tab 46).

[12]Peter Lloyd, "ASIO raided office of lawyer representing East Timor in spying case", ABC News, 3 December 2013 (judges' folder, tab 47)

[13]Conor Duffy, "New details emerge in claims of spying on East Timor", 7.30, ABC (4 December 2013) (judges' folder, tab 48).

cannot name, he was instructed to undertake a mission in East Timor to clandestinely record the conversations [of] the then Timorese negotiating party". If you drop down a little further, you will see an interchange between Mr. Collaery and Conor Duffy, the journalist, and if you drop down a little further you see Mr. Collaery quoted as saying "Th[e] witness has [an] intelligence medal. [He] is a most decorated, senior official". Could I then pause on the next paragraph, which is of grave concern to Australia. Conor Duffy, the journalist: "7.30 has part of his crucial affidavit, which says the then head of ASIS instructed him to plant a listening device in East Timor on the orders of the then ASIS head and now ASIO boss, David Irvine". I pause on that. That would appear to indicate that Mr. Collaery, on behalf of East Timor, having obtained information from the ex-ASIS officer, in breach of Section 39, has then disclosed that information in the form of the affidavit, the very affidavit apparently they wish to assert State property immunity over, to a journalist of a major media network in Australia in order that that material can be published widely in Australia. I trust the Court will see, based on that material, the apprehension which underlay the concern I expressed yesterday. And you will see, in the dramatic manner that television producers like to do, if you turn to the top of the next page, that it proceeded to a male voice-over reading from the affidavit — in a dramatic form one might imagine — to convey with maximum publicity and exposure the material apparently communicated from X to Mr. Collaery on behalf of East Timor and then republished in Australia. The Court may see the concern Australia holds and expresses as to whether this conduct is wrongful, is unlawful and is damaging to our security.

(d) To complete the chronology, on 4 December 2013, in Australian Associated Press, Mr. Collaery was cited as saying again the witness was "the director of all technical operations at ASIS"[14].

(e) And on 5 December, in the letter recording the removed materials I have already shown you, he identified a witness statement, and affidavit, from an anonymized person.

27. There are two other aspects of the chronology I wish to refer to, if the Court would please go to tab 50. I now wish to underpin the proposition I put that there is an apprehension that

[14] "Raided East Timor Lawyer calls for Inquiry", Australian Associated Press, 4 December 2013 (judges' folder, tab 49).

the Timorese Government has used the information obtained through its Agent, Mr. Collaery, as a springboard to ascertain the identities of Australian officers, potentially putting their lives at risk. The Court will see from the highlighted material from the *Sydney Morning Herald*, in the third paragraph, that Mr. Pires, East Timorese National Resources Minister, said: "We think we have identified the team of people who came in to do the bugging. . . They are males, along with a possible lady spy". He said East Timor would keep the names secure and then I pause on the next sentence, but he noted that at least one of them was still working overseas and under the same name, and maybe at risk "if the names get out over the internet"[15]. And if you drop down about five paragraphs in the highlighted material, you will see that the claims of spying come from a former Australian secret intelligence service agent who turned whistleblower.

28. And if you would turn to the next tab, please, tab 51, Mr. Pires is further quoted, in the middle, saying this: "We think we have identified things going into Timor at a particular date and coming out, and that kind of relates to the stories we've been provided with" — apparently a reference by Mr. Pires to the information he obtained through Mr. Collaery from X. I continue the quote: "We've got names that we have been able to deduce. Those names are inside some of our computers and in today's age, no-one with a computer is safe". I drop down a little further and "If those names wind up in the wrong hands, if those people may be still active in other parts of the world . . . they have to take extra precaution not to be identified, there are dangers involved. We don't want anyone else to get hurt in this thing."[16]

29. Let me be clear so that there is no misapprehension. I do not assert that Minister Pires of Timor-Leste has a positive intention to publish the names of the ASIS officers that he has, it would appear, obtained through the actions of the Mr. Collaery and X. I do not positively assert that Minister Pires has an intention to harm the lives of those persons. But I trust you will now see that 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, Mr. President,

---

[15]Tom Allard, "East Timor claims it knows which Australian spies bugged its offices", *Sydney Morning Herald*, 9 December 2013 (judges' folder, tab 50).

[16]Rebecca Le May, "More whistleblowers in Timor spy scandal", *Sydney Morning Herald* (9 Dec. 2013) [Judges' Folder, tab 51].

Members of the Court, that is unacceptable. Minister Pires, Mr. Collaery and officer X should not be the guards of the security of Australian lives and information.

30. The final matter in this, I apologize slightly long answer to the question — but I thought it was important that we show you that the proposition was put with care and consideration — is that in the First Procedural Meeting on 5 December, counsel for Timor-Leste acknowledged that there would need to be arrangements "to protect the anonymity of the witness" and, it was said, "[to] prevent the identification of *any* other intelligence agents". It was clear from that statement that the witness statement of affidavit has in fact disclosed names of other Australian intelligence agents — that being information from which, apparently, Mr. Pires has proceeded to do his further deductions.

31. Could I move to that longish answer to your first question, to a slightly shorter answer to your second question[17] — although not too short. Your question was, and thank you for the question: it has caused us to go back and look at Section 25 (4C) *(a)*, the documents, data and property — is it lawful to still retain them on the ground that returning them would currently be prejudicial to Australia's security?

32. Our answer is "yes" for two reasons. The first is that, because of the Attorney-General's direction, ASIO to date has not inspected any of the documents. It has not commenced its task because the documents are being kept under seal for all purposes until we have this Court's decision on provisional measures. So, to date, no information has been obtained from the documents. The second matter is this — which is looking forward. Why is it that ASIO needs to look at these documents in order to protect Australia's security? And I trust the answer now may be slightly better revealed, from the chronology I have given you. The central enquiry for ASIO is what is the nature and extent of the threat to security revealed by the documents? Do they reveal that a former officer has disclosed and threatens further to disclose security information? If they do, the questions ASIO would need to ask are these:

(a) Has Mr. X disclosed or does he threaten to disclose names or identities of serving or former officers?

---

[17] Judge Sepulvéda-Amór: "In accordance with the ASIO Act, Section 25(4C) . . Should the documents, data and other property seized by the Australian authorities at the premises of Mr. Bernard Collaery be still retained by the Australian authorities on grounds that returning them is currently prejudicial to Australia's national security?"

(b) If he does, will that endanger the lives or security of those persons, their families, persons they have dealt with, particularly if they are posted outside Australia in dangerous places?

(c) Has X disclosed or does he threaten to disclose methods of operation of ASIO, such as techniques, technical capabilities and trade craft, or indeed, has he disclosed dealings of ASIO with the intelligence agencies of friendly countries?

(d) How widespread are the actual or threatened disclosures by X? Are they solely to Timor-Leste or to other States? Are they to individuals as well as to foreign States?

33. It is not for Australia today to be able to assert or prove the precise nature of these threats. We do not know what is in the documents. But I trust we have done enough to establish before you that these threats exist and they are real. And it is imperative in ASIO and Australia's interest that it be allowed to do its job and inspect the documents and answer the questions I have posed.

34. If ASIO finds there is no significant threat, that is the end of the matter — the documents will be returned to Mr. Collaery.

35. If it finds a significant threat, it will provide advice on actions Australia can or should take to mitigate the harm to Australia.

36. And that is why I said to you yesterday, it is the object of this Request and a true vice in it that Timor-Leste invites you to make an order that will be almost final in effect. Assuming a final hearing and judgment, say in 12 to 18 months hence, ASIO would be sterilized for that period of time, a period so long that if these documents would reveal threats, they will probably already have come to pass. And that is damage which the Court can never undo, by money or otherwise, if — when it comes to final judgment — you accept that Timor-Leste's legal claims to absolute property rights are erroneous.

37. Might I say this: almost everyone in this Court has at some time served a government and become privy to secrets, whether intelligence, security Cabinet material or otherwise. We all know the rules. Secrecy is important. In the exceptional case where there is thought to be a compelling higher interest which calls for disclosure, there will usually be a procedure available. In Australia that procedure requires seeking the consent of the Director General of ASIO to make the disclosure. What is not open for a State officer, serving or past, is to place his or her

conception of conscience or morality, or worse still private interest, above the law. Worse still again is for that State officer to share those secrets with a foreign State, such that between them, they determine the limits on disclosure. We ask you not to grant provisional measures because they would aid that behaviour by the persons I have so far identified.

Timing of the warrant

38. I need to deal with certain further questions. Judge Bennouna's question concerning the timing of the warrant[18].

The search warrant was issued on 2 December 2013 and executed the next day because, by then, Australia was in possession of information indicating it was likely (in the sense of a real risk) that a person I have referred to as X:

(a) had made disclosures of information concerning Australia's security to Mr. Collaery on behalf of Timor-Leste;

(b) would make further such disclosures, disclosures which Australia could not control or confine in terms of subject-matter, purpose or recipients;

(c) might leave Australia within a matter of days with no certainty of return; and

(d) might destroy documents and data which might provide intelligence regarding such disclosures.

39. They were the concerns which made it essential for three immediate interrelated steps to be taken: The first, was that X's passport had to be cancelled; the second, was the warrant on X's premises; the third, was the warrant on Mr. Collaery's premises. A view was taken that if those steps were not taken immediately, they may not be able to be taken later as effectively. And, I do not need to remind the Court of other instances of which we are aware publicly of persons who have fled their country with dangerous information they should not have taken with them for exposure and when it is then too late to act.

40. Might I assure the Court, and this is my final answer to this question, there was no connection between the timing of the matters, that I have just described, and the preliminary hearing here in The Hague, in the Arbitral Tribunal on 5 December. Mr. X was not a witness in the

[18]Judge Bennouna: "Can the Australian delegation explain to the Court why the Search Warrant was delivered on 2 December 2013 and executed on 3 December, that is, two days before the first hearing of the Arbitral Tribunal, held on 5 December 2013?"

Tribunal on that day. No witnesses were being called at all, it was a preliminary hearing and, as far as Australia knew, X did not have a plan to travel to The Hague at that time.

Ownership in the removed materials

41. Judge Yusuf's question on ownership of property. Thank you for that, we have looked again closely, because we did not make our position sufficiently clear[19]. Questions of ownership cannot be answered in the absence of a proper examination of the documents in question. That examination has not occurred because we have not inspected the documents. We therefore cannot accept the proposition that the documents are necessarily the property of Timor-Leste, nor can we put you a full submission on where ownership might lie.

42. There are however two matters we can put by reference to ownership. The first is this:

(a) to the extent the documents contain a witness statement or affidavit disclosing confidential information belonging to Australia, the owner would be Australia and certainly not Timor-Leste. Let me give you an example: if Mr. Edward Snowden flees America containing information in documents that he has stolen, and if he gives that information to a foreign State or to a media outlet, that would not deprive the United States of ownership in those materials. So one real possibility to be investigated, we would say in the Arbitral Tribunal or the Australian courts, is whether to the extent the material contains the information of Australia, the owner of the information is Australia, not Timor-Leste.

(b) The second proposition I should mention is this: we have provided to the Court in tabs 52 and 53, material which would indicate that, up until perhaps November of last year, Mr. Collaery *was acting as the solicitor for Mr. X*. Now, there is at least a real possibility that Timor-Leste does not have ownership of material generated in the capacity acting as solicitor for Mr. X[20].

43. Could I mention one related matter about the Arbitration. There is sufficient before you now to know that it is likely that Timor-Leste wishes to tender evidence from the person I have described as X in that Arbitration. For the information of the Court, but not for you to rule upon in

---

[19]Judge Yusuf: "In the view of the Parties, to whom did the individual items listed in the ASIO Property Seizure Record of 3 December 2013 and their contents belong at the time of their seizure?"

[20]Letter from Bernard Gross to John Reid, dated 12 December 2013, judges' folder, tab 52; Richard Ackland, "George Brandis' security clean-up leaves out messy questions", *Sydney Morning Herald*, 3 January 2014, judges' folder, tab 53.

any way, it is appropriate to indicate that if Timor-Leste takes that course, and if the proposed evidence were to disclose national security information of Australia, or be given in breach of Australian criminal law, Australia would intend to object to the admissibility of the evidence. We informed the Tribunal on 5 December we would bring forward any application of that character with expedition and we will do so.

Duration of the undertaking

44. Judge Donoghue's question[21] concerning the duration of the undertaking. As to the first question, it will not expire. All the words in question were intended to do was to allow for a possible variation after the Court so ordered. There are no circumstances, other than those referred to in subparagraph 2, which would require a variation. The purpose of subparagraph 2 was that if circumstances arose where it became necessary — for reasons currently unanticipated — for the Attorney-General to inform himself of the material, Australia will first bring the matter to you, on notice to Timor-Leste, and will not act before you have been able to consider the matter.

Relationship between paragraphs (3) and (4) of the undertaking

45. The answer to your second question[22] is "no".

46. The purpose of subparagraph 4 was only to clarify that matters concerning the Timor Sea and related negotiations, as well as the conduct of this Court proceedings and the Tribunal, fall outside the "national security" purpose referred to in subparagraph 3. I trust that answers that.

Past and future disclosure of the removed materials

47. In relation to Judge Greenwood's question: can we undertake the disclosure of information derived from the documents seized or notes taken during the execution of the search

[21]Judge Donoghue, Question A: "My first question relates to the chapeau that begins the paragraph on page 2. I seek to clarify the significance of the first 'or' on line 1 of page 2. Under what circumstances would the undertaking of the Attorney-General expire prior to this Court's Judgment?"

[22]Judge Donoghue, Question B: "My second question also relates to the paragraph on page 2. I seek to clarify the relationship between subparagraph (3) and subparagraph (4) in light of the fact that subparagraph (4) begins with the phrase 'without limiting the above'. If Australia wishes, for national security purposes, to provide the material or information derived from the material to a part of the Australian Government that has responsibility for the matters described in subparagraph (4), could it do so consistent with the Undertaking."

warrant[23] has not occurred to persons involved in the arbitration or commercial negotiations? Yes, I give that undertaking.

48. As to your second question[24]: Either the documents will be returned once the identified period expires. In which event the ASIO Act does not govern their special use in a prosecution or perhaps in the circumstances more relevant to the question. If the documents remain in the hands of ASIO or the prosecutors, Australia's approach would be to make the appropriate application to the Court under the *National Security Information (Criminal and Civil Proceedings) Act 2004* (the NSI Act) (see tab 30 of the Annexes to Australia's Written Observations) which can be applied to ensure that the information does not come to the notice of persons referred to in the question.

49. The Attorney-General undertakes to you that in the event of such a prosecution, he will direct the Commonwealth Director of Public Prosecutions to invoke the relevant provisions of that Act. And, in the unlikely event that a prosecution took place before the resolution of this matter, the Attorney-General, through me, undertakes that he will inform the Court of the undertaking I have just given you, he will seek the appropriate orders to limit the dissemination of the information. And in the unlikely event the orders were not made, the Attorney-General will bring the matter back to this Court before any further action is taken in Australia.

50. Mr. President, that concludes my presentation. I thank you for your attention, Members of the Court.

51. I invite you to call upon Mr. Campbell.

The PRESIDENT: Thank you, very much, Mr. Solicitor-General. Now I give the floor to Mr. Campbell. Please, take the floor.

Mr. CAMPBELL: Mr. President, Members of the Court, in the second round, I will be addressing the plausibility of the rights asserted by Timor-Leste over the past few days and, in

---

[23]Judge Greenwood, Question A: "Does Australia undertake that no information derived from the documents seized or from notes made in the course of the execution of the search warrant has already been communicated to any person involved in the arbitration proceedings or any person who might be involved in negotiations relating to the matters referred to in paragraph 4 of that undertaking?"

[24]Judge Greenwood, Question B: "In the event of a prosecution in Australia, will any of the documents seized or information derived from those documents be disclosed in court in such a way that those documents or that information will be likely to come to the notice of persons involved in the arbitration, in the proceedings in this Court or in any negotiations of the kind to which I have referred?"

particular, the submissions made by Sir Michael Wood this morning. I will also respond to the third question posed to Australia, that you posed this morning to Australia, Vice-President Sepúlveda-Amor. I will seek to do that.

1. Before doing so, I will just address a few matters in less detail. The first is to respond to what counsel for the Applicant had to say on the other conditions for the indication of provisional measures. In relation to the need for a sufficient link, it is our submission that nothing said by Timor-Leste this morning detracts from the submissions made by Mr. Burmester on that issue in the first round. In relation to irreparable prejudice and urgency, similarly, Timor-Leste does not point to any material which overcomes the arguments made by Australia in the first round. In particular, in the face of the undertakings provided by the Attorney-General, Timor-Leste cannot point to any irreparable harm. And, hence, no urgency can be shown.

2. In relation to urgency, Timor-Leste suggested that any remedies in an Australian court may not be effective and did so by reference to Australia's *Administrative Decisions (Judicial Review) Act*[25]. However, this is not the only basis upon which to challenge decisions such as that taken under the ASIO Act. The relevant legal bases and the courts in which actions might be taken include Section 75 *(v)* of the Australian Constitution and the High Court. And ASIO officers and the Attorney-General are subject to that provision and, if jurisdiction if applicable, that court.

3. I will just now address a couple of miscellaneous matters that were touched on by Sir Michael this morning. The first is that there was certainly no disrespect intended, as suggested by Sir Michael this morning[26], in Australia's comments that it would not be raising matters of jurisdiction and admissibility at the provisional measures stage. Contrary to what Sir Michael stated, we had thought that this statement might be helpful to the Court. If what Sir Michael is suggesting is that Australia should have indicated that it accepted there is prima facie jurisdiction and admissibility that is an entirely different matter, particularly given that we have reserved the right to raise questions of jurisdiction and admissibility at the merits stage.

4. Secondly, Sir Michael pointed to a difference between the exceptions to legal professional privilege as it applies in domestic law and the exceptions to legal professional privilege as they

---

[25]CR 2014/3, p. 21, para. 40 (Wood).

[26]CR 2014/3, p. 14, para. 8 (Wood).

apply under international law[27]. In this respect, I would simply refer the Court again to the Report by independent expert James Spigelman, in the *St. Mary's* case, made in the context of international law, that privilege "does not extend to communications which undermine the integrity of, or otherwise constitute an abuse of, the administration of justice"[28].

5. Mr. President, Members of the Court, moving to the matter of the plausibility of rights relied upon by Timor-Leste, Sir Michael Wood this morning stated that Australia had not addressed most of the points Timor-Leste made on this matter[29]. I thought we had — so I apologize at the start, if some of what I have to say seems familiar. Sir Michael also accused Australia of using the well-known tactic of overstating a proposition in order to knock it down. I believe this was in relation to my statement that Timor-Leste claims, without any basis, that State property and papers enjoy "absolute immunity"[30]. Sir Michael took umbrage at the reference to the term "absolute". I apologize if I implied that counsel for Timor-Leste used that term, when they did not.

6. But I want to move to the real overstatement, and not a merely semantic one, and I also wish to explain why I used the word "absolute". The real overstatement — and this time an overstatement of law — was made by Sir Michael on Monday when he referred to, without qualification, a general principle, that is, the rights of Timor-Leste: "as a sovereign State, including inviolability of its documents and their entitlement to immunity from measures of constraint"[31]. This overstatement, I would say, was compounded by Sir Elihu's application of the principle to the context of this case: "The Timorese rights are, moreover, entitled to recognition no matter what special provisions may be asserted by Australian law against them."[32]

7. This is indeed in the nature of an *absolute* right asserted by Timor-Leste. While treaties and customary international law set out particular immunities applying in particular circumstances, they do not support an immunity of the breadth put forward by Timor-Leste, either expressly or by combining all the treaties together to underpin a general principle, as Timor-Leste now admits that

---

[27]CR 2014/3, p. 13, para. 5 (Wood).

[28]CR 2014/2, p. 28, para. 29 (Campbell).

[29]CR 2014/3, p. 15, para. 1 (Wood).

[30]CR 2014/3, p. 18, para. 27 (Wood).

[31]CR 2014/1, p. 36, para. 17 (Wood).

[32]CR 2014/1, p. 28, para. 25 (Lauterpacht).

it is doing. This morning, Sir Michael, after referring to a "network of treaties and customary international law", stated: "The similarities, both in content and rationale, between the different types of immunity have helped develop and form the broader principles that have emerged into a general customary law of State inviolability and immunity."[33]

8. I looked in vain for a footnote reference to support this mega-immunity and there was no footnote. We ourselves can find no authority to support it and certainly no judicial authority. It is indeed an overstatement, and this time, as I said earlier, one of law.

9. It is important not to assume that an immunity that expressly applies in one particular context applies more generally or to another context — and this is what Timor-Leste has done. For example, Sir Michael stated this morning: "Timor-Leste relies on the principles reflected in all immunities: that substantive law, which normally applies, cannot be enforced against a State, be it in relation to its diplomats, its special missions or its property."[34]

10. Yes, there are specific immunities applying to diplomats and special missions — but this does not mean they can be applied by sleight of hand simply by adding the words "or its property".

11. Just to clarify the position in relation to treaties as well, I would like to make clear once again that there is no immunity or inviolability under existing convention to which both Australia and Timor-Leste are party that affords immunity to the documents and other material removed from 5 Brockman Street, Narrabundah.

12. Sir Michael suggested this morning that I was "highly selective" in responding to Timor-Leste's submissions, and asks where is Australia's response to a number of examples of alleged immunity to which it refers[35]. The fact is, that none of the examples to which Timor-Leste refers, such as the Spanish/UK exchange in 2013 (tab 17 of Timor-Leste's judges' folders) or particular passages such as in Professor Denza's text[36] clearly affirm the proposition that Timor-Leste seeks and needs to establish, namely, that the records held in an agent's office enjoy absolute immunity from local criminal or related coercive processes. In particular, the Spanish/UK

[33]CR 2014/3, p. 18, para. 28 (Wood).

[34]CR 2014/3, p. 15, para. 13 (Wood).

[35]CR 2014/3, p. 18 para. 28 (Wood).

[36]CR 2014/3, p. 19, para. 29 (Wood).

incident concerning bags in transit clearly marked as official relates to a situation expressly contemplated by the Vienna Convention — namely, communications between a State and its diplomatic representatives in another country. The incident did not involve documents located in premises of a commercial agent. Similarly, Denza at page 226 is referring to "official correspondence of the mission" — she is not referring to documents held in the premises of a commercial agent[37].

13. This morning, Sir Elihu also accused Australia of ignoring the municipal law authorities deployed by Timor-Leste in support of the proposition that a broad and general "principle" of immunity or inviolability applies to all State property as a matter of customary international law[38]. However, those cases, we would submit, do not provide any assistance to this Court.

14. They include the cases of *Rahimtoola* v. *Nizam of Hyderabad*; the *SS "Cristina"* and *Juan Ysmael & Co Inc* v. *Indonesian Government*. They all concerned judicial proceedings and they were all in the 1950s.

15. The passages from those cases relied upon by Timor-Leste reinforce the generally and well-understood rules of jurisdictional immunities relating to proceedings before a court. They do not address the circumstances of this case.

16. Nor does the decision of this Court in *Germany* v. *Italy*, which also concerned jurisdictional immunity and provides no support for a general right of immunity and inviolability of documents.

17. Sir Michael this morning also sought to assert the application of the principles of jurisdictional immunity to the circumstances of this case. There are two points to be made here: the first is he sought to do so by saying that there are prospective criminal prosecutions in this case, and therefore they could amount to a proceeding for the purposes of the 2004 Convention and customary international law. Well, it is quite clear that the 2004 Convention does not apply to criminal proceedings. The ILC Commentary makes this clear:

---

[37]E. Denza, *Diplomatic Law*, 3rd edition, OUP, 2008, p. 226.

[38]CR 2014/3, p. 9 (Lauterpacht).

> "the draft articles do not define the term 'proceeding', it should be understood that they do not cover criminal proceedings."[39]

I will not repeat what I had to say the other day, other than to say it is quite, clear both under international law and Australian domestic law, that the Attorney-General is not a Court — he certainly does not look like one anyway.

18. I now turn to the question asked by you, Vice-President Sepúlveda-Amor. You asked — this was your third question — you asked Australia the following question:

> "Does Australia consider that, under customary international law, State documents are entitled to international protection in the form of immunity and inviolability outside the framework of diplomatic and consular relations? If so, what is the extent of international protection that Australia claims for its own State documents in foreign territory?"[40]

19. Australia would answer that question as follows: the principal immunities applying to State documents outside the framework of diplomatic and consular relations are those set out in the treaties and conventions in force and the customary international law reflective of those conventions. An example of a relevant convention is the New York Convention on Special Missions[41].

20. While Australia does not accept, as asserted by Timor-Leste, that there is a "general customary law of inviolability and immunity", there are more closely defined immunities under customary international law, such as the jurisdictional immunities of States from the courts of other States, which I mentioned earlier.

21. As to the second part of your question, Mr. Vice-President, the degree of protection that Australia claims for its own documents on a foreign territory will depend on the circumstances of their location. It suffices to say that if Australian Government documents were located in the territory of another country in exactly the same circumstances as in this case, they would not be inviolable or immune. That concludes the answer to the question.

Mr. President, let me conclude, by way of a summary:

---

[39]Draft Article 2 Paragraph 1 (*a*), *Yearbook of International Law Commission*, 1991, Vol. II, Part Two, 14.

[40]CR 2014/3, p. 25.

[41]1400 *UNTS* 231.

— There is no general customary international law principle concerning the immunity and inviolability of State property and documents. Such a principle is implausible.

— Secondly, there is no jurisdictional immunity applying to the documents removed from 5 Brockman Street, Narrabundah. There is no proceeding. There is no court. As the immunity does not apply, the question of its plausibility is not even reached.

— Thirdly, Timor-Leste has not identified any other form of immunity or inviolability that would apply to those documents under either customary or conventional international law.

22. Mr. President, Members of the Court, thank you for your attention. I now ask you to call upon the Agent to conclude Australia's observations.

The PRESIDENT: Thank you very much, Mr. Campbell. I give the floor to the Agent, Mr. John Reid. You have the floor, Sir.

Mr. REID:

CONCLUDING REMARKS

Introduction

1. Mr. President, Members of the Court, given the hour I will be mercifully brief. But before I conclude Australia's submissions, there are two brief points which demand response from me, on behalf of the Government of Australia.

2. First, Sir Michael this morning remarked that it would be helpful if I, as Agent, could confirm for the Court that the undertakings provided by the Attorney-General bind Australia as a matter of international law. Allow me to repeat what I said yesterday for the benefit of our friends.

3. And I quote, from paragraph 6 of yesterday's transcript:

> "[T]he Attorney-General of the Commonwealth of Australia has the actual and ostensible authority to bind Australia as a matter of both Australian law and international law."

4. I need say no more. Again, as I said yesterday, Australia has made the undertakings. Australia will honour them.

5. Second, my friend His Excellency Ambassador da Fonseca this morning sought to litigate before you the maritime boundary between our two nations.

6. That matter is simply not in issue here. The treaties which govern the maritime arrangements in the Timor Sea ought be respected. They remain in force and Australia is committed to their faithful implementation.

7. Australia does regret the description of the maritime delimitation outlined by His Excellency this morning. It is a description which we would oppose in the most strenuous terms.

8. Mr. President, Members of the Court, you have now heard Australia's submissions. Briefly, they can be summarized thus:

9. First, there are no plausible rights sought to be protected by Timor-Leste in this case. Our friends are effectively asking this Court to accept a notion of extra-territorial reach of absolute immunity so broad as to render obsolete the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and customary international law on State immunity.

10. Second, there is no urgency. For if there were, Timor-Leste would surely have availed itself of other more appropriate forums at some point in these last seven weeks.

11. Third, there can be no irreparable harm. To the extent that any legitimate right resides in Timor-Leste — a point which we refute in the strongest terms — the comprehensive and solemn undertakings provided by the Attorney-General of Australia to this Court must surely satisfy you that those rights are sufficiently protected pending final judgment in these proceedings.

12. Mr. President, Members of the Court, I would respectfully echo the comments of my friend His Excellency Ambassador da Fonseca this morning. Australia and Timor-Leste do have a close relationship. It is a relationship built on mutual respect and friendship. My Government remains strongly committed to the continued growth of that friendship.

13. I would at this point, Mr. President, conclude by thanking my delegation and distinguished counsel for their tireless work on behalf of the Government of Australia.

14. I would thank also the Registrar and his staff, the interpreters and, of course, thank you, Mr. President, Members of the Court, for the attention you have paid to Australia's oral pleadings over the course of these hearings.

Final Submissions

15. It now falls to me to read the Final Submissions of Australia.

16. In accordance with Article 60 of the Rules and having regard to the Request for Provisional Measures filed by the Government of the Democratic Republic of Timor-Leste, and its oral pleadings,

> "1. Australia requests the Court to refuse the Request for the indication of provisional measures submitted by the Democratic Republic of Timor-Leste.
>
> 2. Australia further requests the Court stay the proceedings until the Arbitral Tribunal has rendered its judgment in the *Arbitration under the Timor Sea Treaty*."

17. A signed copy of these Submissions has been transmitted to the Court.

18. Mr. President, Members of the Court, thank you.

The PRESIDENT: Thank you, Sir. The Court takes note of the Final Submissions of the Government of the Commonwealth of Australia which you have just read as its Agent. This brings the present series of sittings to an end. It remains for me to thank the representatives of the two Parties for the assistance they have given to the Court by their oral observations in the course of these four hearings. In accordance with practice, I would ask the Agents to remain at the Court's disposal. The Court will render its Order on the Request for the indication of provisional measures as soon as possible. The date on which this Order will be delivered at a public sitting will be duly communicated to the Agents of the Parties. Since the Court has no other business before it today, the sitting is closed.

The Court rose at 6.05 p.m.
