

East Timor calls on The Hague to condemn ASIO raids

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Inside The Hague: Magistrates at the International Court of Justice. *Photo: AFP*

East Timor has called on the International Court of Justice to deliver a "clear, firm and severe" condemnation of Australia for using ASIO agents to raid the office of its Canberra-based lawyer.

As proceedings kicked off in The Hague, the international law expert and academic Sir Elihu Lauterpacht delivered a blistering opening statement on behalf of the fledgling nation.



East Timor's Foreign Affairs minister Jose Luis Gutierrez (right) speaks with Australian lawyer Bernard Collaery in The Hague. *Photo: AFP*

At issue were the ASIO raids on East Timor's lawyer Bernard Collaery and on a former senior officer of the Australian Secret Intelligence Service. The raids on December 3 were part of an escalating dispute between Australia and East Timor over some \$40 billion of oil and gas reserves in the Timor Sea amid allegations of dirty dealings and espionage.

The ASIO raids stunned many observers given they occurred in the middle of legal proceedings between Australia and East Timor over the oil and gas resources and reams of correspondence between the fledgling nation's legal advisers were seized by Australia's spies.

East Timor wants the material - legal documents, a laptop, smartphone and USB - returned to them. Failing that, it wants the material sealed and sent to the ICJ to look after.

East Timor also wants the ICJ to require Australia to cease any ongoing spying on its officials and lawyers.

Sir Elihu said the ASIO raids amounted to the unlawful seizure of the sovereign property of East Timor, also known as Timor Leste.

While Australian attorney-general George Brandis said the raids were justified on "national security" grounds, Sir Elihu said the raids were "undoubtedly a violation of the national security of Timor Leste".

"What's required is a clear, firm and severe condemnation of what Australia has done," he said.

Sir Elihu was speaking before a panel of the ICJ, which included the surprise addition of Ian Callinan, the former high court judge renowned for his links to conservative Australian politicians.

Sir Elihu rejected the significance of Senator Brandis' extraordinary personal undertaking not to read highly sensitive documents seized by ASIO in the raids, revealed by Fairfax Media.

He also discounted the Attorney-General's promise not to allow Australian officials and lawyers involved in the dispute to read the seized papers.

He said the material seized by ASIO included geological surveys and advice on maritime boundaries which would be of great use to Australia in any future litigation between the two nations.

East Timor had moved earlier last year in The Hague for the treaty to be declared invalid, saying it is unfair and not completed in good faith as Australia allegedly eavesdropped on its government's offices during negotiations.

The ex-ASIS agent, who was raided, interrogated and had his passport suspended, is East Timor's key witness in this dispute.

The former spy allegedly led a bugging operation of East Timor cabinet rooms during oil and gas treaty talks in 2004.

Senator Brandis, who authorised the raids in December, is both in charge of ASIO and the legal case being run by Australia against East Timor over the Timor Sea reserves in The Hague.

The Senator argues that legal professional privilege did not apply to the documents because they disclosed national security information and "therefore involve the commission of a serious criminal offence under Australian law".

Any objections by East Timor to the raids should be heard in an Australian court or another arbitration tribunal in The Hague, rather than the ICJ, he adds.

Reflecting the seriousness of the case, and the oil and gas revenues ultimately at stake, Australia has a 16-person team of lawyers and assistants representing it at the ICJ, including some of the world's leading international law experts.

Even so, some observers say the optics are bad for Australia, not least because Timor is an impoverished nation and Australia a wealthy one.

"This is going to be pretty hard on Australia's image, it's not exactly glorious for them," international law expert Olivier Rentelink from The Hague's Asser Institute told Agence France Presse.

Australia's lawyers will be heard on Tuesday night, while both sides will sum up on Wednesday.