



INTERNATIONAL COURT OF JUSTICE

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Press Release

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

The Court decides to grant the Parties' request to postpone the oral proceedings due to open on 17 September 2014

THE HAGUE, 5 September 2014. On 3 September 2014, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, decided to grant the Parties' request to postpone the oral proceedings in the case concerning Questions relating to the Seizure and Detention of Certain Documents and Data (Timor-Leste v. Australia). Those proceedings had been due to open on 17 September 2014 and to last until Wednesday 24 September 2014.

By a joint letter dated 1 September 2014 from H.E. Mr. Joaquim da Fonseca, Agent of the Democratic Republic of Timor-Leste, and Mr. John Reid, Agent of Australia, the Parties had requested the Court "to adjourn the hearing set to commence on 17 September 2014, in order to enable [them] to seek an amicable settlement".

The Court's decision was taken pursuant to Article 54 of the Rules of Court. Paragraph 1 of that article provides that:

"Upon the closure of the written proceedings, the case is ready for hearing. The date for the opening of the oral proceedings shall be fixed by the Court, which may also decide, if occasion should arise, that the opening or the continuance of the oral proceedings be postponed."

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History of the proceedings

On 17 December 2013, the Democratic Republic of Timor-Leste instituted proceedings against Australia with regard to the seizure and the subsequent detention by "agents of Australia of documents, data and other property which belongs to Timor-Leste and/or which Timor-Leste has the right to protect under international law".

Timor-Leste also filed on 17 December 2013 a Request for the indication of provisional measures to "protect [its] rights . . . in the documents and data seized, and . . . to prevent their use by Australia contrary to the rights and interests of Timor-Leste, and . . . to end the unlawful impediment to the conduct by Timor-Leste of its affairs caused by the seizure and detention of the

documents and data, in particular (but not exclusively) in relation to the conduct of the pending Arbitration under the Timor Sea Treaty between Timor-Leste and Australia”. Timor-Leste further requested that the President of the International Court of Justice exercise his power under Article 74, paragraph 4, of the Rules of Court.

By a letter dated 18 December 2013, the President of the Court, acting under the above-mentioned provision of the Rules of Court, called upon Australia “to act in such a way as to enable any Order the Court will make on the request for provisional measures to have its appropriate effects, in particular to refrain from any act which might cause prejudice to the rights claimed by the Democratic Republic of Timor-Leste in the present proceedings”.

Public hearings on the Request for the indication of provisional measures were held from Monday 20 to Wednesday 22 January 2014. At the end of the second round of oral observations, the Parties presented the following submissions to the Court:

Timor-Leste asked the Court to indicate the following provisional measures:

- “(a) [t]hat all of the documents and data seized by Australia from 5 Brockman Street, Narrabundah, in the Australian Capital Territory on 3 December 2013 be immediately sealed and delivered into the custody of the International Court of Justice.
- (b) [t]hat Australia immediately deliver to Timor-Leste and to the International Court of Justice (i) a list of any and all documents and data that it has disclosed or transmitted, or the information contained in which it has disclosed or transmitted to any person, whether or not such person is employed by or holds office in any organ of the Australian State or of any third State, and (ii) a list of the identities or descriptions of and current positions held by such persons.
- (c) [t]hat Australia deliver within five days to Timor-Leste and to the International Court of Justice a list of any and all copies that it has made of any of the seized documents and data.
- (d) [t]hat Australia (i) destroy beyond recovery any and all copies of the documents and data seized by Australia on 3 December 2013, and use every effort to secure the destruction beyond recovery of all copies that it has transmitted to any third party, and (ii) inform Timor-Leste and the International Court of Justice of all steps taken in pursuance of that order for destruction, whether or not successful.
- (e) [t]hat Australia give an assurance that it will not intercept or cause or request the interception of communications between Timor-Leste and its legal advisers, whether within or outside Australia or Timor-Leste.”

Australia, for its part, requested the Court “to refuse the Request for the indication of provisional measures submitted by the Democratic Republic of Timor-Leste” and to “stay the proceedings until the Arbitral Tribunal has rendered its judgment in the Arbitration under the Timor Sea Treaty”.

On 3 March 2014, the Court delivered its Order on the Request for the indication of provisional measures submitted by Timor-Leste. In its Order, the Court indicated the following provisional measures:

- it decided, by twelve votes to four, that Australia should ensure that the content of the seized material was not in any way or at any time used by any person or persons to the disadvantage of Timor-Leste until the present case had been concluded;

- it also decided, by twelve votes to four, that Australia should keep under seal the seized documents and electronic data and any copies thereof until further decision of the Court;
- it further directed, by fifteen votes to one, that Australia should not interfere in any way in communications between Timor-Leste and its legal advisers in connection with the pending Arbitration under the Timor Sea Treaty of 20 May 2002, with any future bilateral negotiations concerning maritime delimitation, or with any other related procedure between the two States, including the present case before the Court.

The written pleadings on the merits were filed within the time-limits fixed by the Order of 28 January 2014 (28 April 2014 for the Memorial of Timor-Leste and 28 July 2014 for the Counter-Memorial of Australia).

On 17 June 2014, the Registrar transmitted to the Parties the schedule for the public hearings adopted by the Court.

The International Court of Justice (ICJ) is the principal judicial organ of the United Nations. It was established by the United Nations Charter in June 1945 and began its activities in April 1946. The seat of the Court is at the Peace Palace in The Hague (Netherlands). Of the six principal organs of the United Nations, it is the only one not located in New York. The Court has a twofold role: first, to settle, in accordance with international law, legal disputes submitted to it by States (its judgments have binding force and are without appeal for the parties concerned); and, second, to give advisory opinions on legal questions referred to it by duly authorized United Nations organs and agencies of the system. The Court is composed of 15 judges elected for a nine-year term by the General Assembly and the Security Council of the United Nations. Independent of the United Nations Secretariat, it is assisted by a Registry, its own international secretariat, whose activities are both judicial and diplomatic, as well as administrative. The official languages of the Court are French and English. Also known as the “World Court”, it is the only court of a universal character with general jurisdiction.

The ICJ, a court open only to States for contentious proceedings, and to certain organs and institutions of the United Nations system for advisory proceedings, should not be confused with the other — mostly criminal — judicial institutions based in The Hague and adjacent areas, such as the International Criminal Tribunal for the former Yugoslavia (ICTY, an ad hoc court created by the Security Council), the International Criminal Court (ICC, the first permanent international criminal court, established by treaty, which does not belong to the United Nations system), the Special Tribunal for Lebanon (STL, an independent judicial body composed of Lebanese and international judges, which is not a United Nations tribunal and does not form part of the Lebanese judicial system), or the Permanent Court of Arbitration (PCA, an independent institution which assists in the establishment of arbitral tribunals and facilitates their work, in accordance with the Hague Convention of 1899).

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