



INTERNATIONAL COURT OF JUSTICE

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Press Release

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Timor-Leste institutes proceedings against Australia and requests the Court to indicate provisional measures

THE HAGUE, 18 December 2013. In the late afternoon of 17 December 2013, the Democratic Republic of Timor-Leste instituted proceedings against Australia with regard to the seizure and the subsequent detention, by “the 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”.

In particular, Timor-Leste contends that, on 3 December 2013, officers of the Australian Security Intelligence Organisation, allegedly acting under a warrant issued by the Attorney-General of Australia, attended an office/residence of a legal adviser to Timor-Leste in Canberra and seized, inter alia, documents and data containing correspondence between the Government of Timor-Leste and its legal advisers, notably documents relating to a pending arbitration under the 2002 Timor Sea Treaty between Timor-Leste and Australia.

Timor-Leste accordingly “requests the Court to adjudge and declare:

First, [t]hat the seizure by Australia of the documents and data violated (i) the sovereignty of Timor-Leste and (ii) its property and other rights under international law and any relevant domestic law;

Second, [t]hat continuing detention by Australia of the documents and data violates (i) the sovereignty of Timor-Leste and (ii) its property and other rights under international law and any relevant domestic law;

Third, [t]hat Australia must immediately return to the nominated representative of Timor-Leste any and all of the aforesaid documents and data, and destroy beyond recovery every copy of such documents and data that is in Australia’s possession or control, and ensure the destruction of every copy that Australia has directly or indirectly passed to a third person or third State;

Fourth, [t]hat Australia should afford satisfaction to Timor-Leste in respect of the above-mentioned violations of its rights under international law and any relevant domestic law, in the form of a formal apology as well as the costs incurred by Timor-Leste in preparing and presenting the present Application.”

As the basis for the jurisdiction of the Court, the Applicant invokes the declarations made by Timor-Leste and by Australia pursuant to Article 36, paragraph 2, of the Statute of the Court.

Timor-Leste also filed on 17 December 2013 a Request for the indication of provisional measures. It states that the purpose of the Request is to protect its rights and to prevent the use of seized documents and data by Australia against the interests and rights of Timor-Leste in the pending arbitration and with regard to other matters relating to the Timor Sea and its resources.

Timor-Leste accordingly “requests that the Court 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.”

Timor-Leste further requests that, pending decision of the Court on its Request for the indication of provisional measures, the President of the Court exercise his power under Article 74, paragraph 4, of the Rules of Court to call upon Australia:

- “(i) immediately to deliver to Timor-Leste and to the International Court of Justice a list of each and every document and file containing electronic data that it seized from 5 Brockman Street, Narrabundah, in the Australian Capital Territory, on 3 December 2013;
- (ii) immediately to seal the documents and data [and any and all copies thereof];
- (iii) immediately to deliver the sealed documents and data [and any and all copies thereof] either to the Court or to 5 Brockman Street, Narrabundah, in the Australian Capital Territory; and

- (iv) not to intercept or cause or request the interception of communications between Timor-Leste (including its Agent H. E. Joaquim da Fonseca) and its legal advisers in relation to this action (DLA Piper, Sir E. Lauterpacht, Q.C. and Vaughan Lowe, Q.C.).”

The full text of the Application and Request will be available shortly on the Court’s website (www.icj-cij.org).

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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