



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



THE SENATE

PROOF

QUESTIONS WITHOUT NOTICE

East Timor

QUESTION

Monday, 1 September 2014

BY AUTHORITY OF THE SENATE

QUESTION

Date Monday, 1 September 2014
Page 43
Questioner Xenophon, Sen Nick
Speaker

Source Senate
Proof Yes
Responder Brandis, Sen George
Question No.

East Timor

East Timor

Senator XENOPHON (South Australia) (14:32): My question is to the Attorney-General. It relates to reports in the Fairfax media today on Witness K, the former ASIS officer and key witness for East Timor in the dispute over the Timor Sea oil treaty between Australia and East Timor and allegations of spying by Australia on the East Timor cabinet and its negotiating team. Will the Attorney-General give an undertaking that Witness K will be able to travel to The Hague to testify on the matter before the International Court of Justice, provided there are undertakings that the identities of current and former ASIS officers are not disclosed?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:33): Thank you very much, Senator Xenophon. I read the report by journalist Tom Allard in the Fairfax press this morning. The report is, in important respects, inaccurate. The Australian Federal Police have confirmed they have received a referral in relation to this matter. As the investigation is ongoing, it is inappropriate to comment further. The journalist claims, and I quote him:

The referral was understood to have come from Senator Brandis or his department.

That statement is inaccurate. The AFP received the referral from ASIO, acting under section 18 of the ASIO Act.

Senator Xenophon, in relation to the assurance you seek, you are surely aware—indeed, as your question acknowledges—this is a matter that is currently before an international arbitral tribunal. I am sure you understand that it is the longstanding practice of Australian governments not to comment on matters currently before international arbitration.

Senator XENOPHON (South Australia) (14:34): Mr President, I have a supplementary question. Can the minister at least indicate, as a general principle, whether witness K, or a key witness in a such a matter, ought to be allowed to give evidence—even via video link—to the Hague if he is not allowed to

travel overseas? Does the Attorney-General agree that Witness K being prevented from giving evidence could potentially impede a fair and just determination by the International Court of Justice?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:35): Senator Xenophon, I am simply not going to run a commentary on the case.

Senator XENOPHON (South Australia) (14:35): Mr President, I have a further supplementary question; I will try again. Can the Attorney-General confirm that, until this dispute between Australia and East Timor, it was the practice of Australia in such matters to agree to a median line for such maritime borders? Why was this not agreed to here?

Senator BRANDIS (Queensland—Deputy Leader of the Government in the Senate, Vice-President of the Executive Council, Minister for Arts and Attorney-General) (14:35): Senator Xenophon, that is not correct. It has been the policy of successive Australian governments that Australia should delimit its maritime boundaries through negotiations rather than resort to third-party dispute settlement, and that is the case here. You are also wrong, Senator Xenophon, in the suggestion that a median line is the only applicable principle. One thing your question ignores is the fact that the Australian continental shelf to the north-west of Western Australia runs beneath the Timor Sea very close to the southern coastline of East Timor. The median line principle, or the equidistance principle as it is sometimes referred to, is sometimes used, as the International Court of Justice affirmed in the North Sea continental shelf case in 1969 and again at the beginning of the Guinea-Bissau arbitration in 1986. It may be displaced by other circumstances.