

# Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation

## Introduction

- 2.1 This chapter reviews the proposed *Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* (the Treaty).
- 2.2 The Treaty aims to formalise defence cooperation between the Parties into an overarching legally-binding agreement. Australia currently has defence cooperation treaties with Turkey and France.<sup>1</sup>
- 2.3 According to the National Interest Analysis (NIA), the Treaty does not raise any domestic or international defence policy concerns.<sup>2</sup> The NIA also stresses the importance of taking binding treaty action to signify Australia's commitment to the Parties' bilateral defence relationship.<sup>3</sup>

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1 National Interest Analysis [2013], *Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation*, done at Perth, 18 January 2013 [2013] ATNIF 3 (hereafter referred to as 'NIA'), para 7.

2 NIA, para 8; also see Mr Michael Carey, Senior Legal Officer, Directorate of International Government Agreements and Arrangements, Defence Legal, Department of Defence, *Committee Hansard*, Canberra, 16 June 2014, p. 1.

3 NIA, para 8.

## Background

- 2.4 The Treaty was initially proposed in 2011 by the former United Kingdom Secretary of State, Dr Liam Fox, during his visit to Australia for Australia-United Kingdom Ministerial (AUKMIN) Consultations.<sup>4</sup> The decision of both Parties to proceed with negotiations was motivated by a common acknowledgement that the current economic environment and emerging global security issues required the close cooperation of like-minded states. In this context, it was recognised that the benefits of the historically strong defence relationship between the Parties could be maximised through a formal treaty, in addition to annual Ministerial consultations between Defence and Foreign Ministers.<sup>5</sup>
- 2.5 Defence engagement with the United Kingdom currently occurs under a range of less-than-treaty-status (non-legally binding) arrangements that cover specific topics including science and technology, capability development, logistics, personnel exchanges and security of information. It has taken the Parties two years to develop the Treaty.<sup>6</sup> During the hearing the Committee was assured of the strength of the Parties' working relationship and it was indicated that any delay in the development of a formal treaty was a 'reflection of how close the relationship is'.<sup>7</sup>
- 2.6 The proposed Treaty will be binding in international law. During the hearing the Australian Department of Defence explained how the Treaty will affect current implementation arrangements:
- The undertakings and the commitments made within this document themselves are legally binding, and it therefore creates a greater solidity and touchstone for the engagement that we conduct. The existing arrangements ... are not legally binding, and the arrangements that we can implement under this will not in and of themselves be legally binding but will refer back to this document, which is legally binding. The implementation arrangements will not be legally binding.<sup>8</sup>
- 2.7 Australia has similar defence cooperation treaties with Turkey and France.<sup>9</sup> The Committee previously reviewed both these treaties and

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4 NIA, para 7.

5 NIA, para 7.

6 Mr Tom Hamilton, Assistant Secretary Global Interests, International Policy Division, Australian Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 1.

7 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 4.

8 Mr Carey, Department of Defence, *Committee Hansard*, Canberra, 16 June 2014, p. 3.

9 *Framework Agreement between the Government of Australia and the Government of the Republic of Turkey on Cooperation in Military Fields* (Canberra, 13 June 2006)

concluded that binding treaty action should be taken.<sup>10</sup> The Committee did not recommend any amendments to the text of either treaty. Asked if the agreements with France and Turkey differed from the Treaty currently before the Committee, the Department stated:

[t]hey are not exactly the same in the scope of what they cover and the details. They are similar in the way that they are a legally binding framework for cooperation with those countries.<sup>11</sup>

## Overview and national interest summary

2.8 The Treaty will formalise and improve the co-operative framework between the Parties to support interoperability.<sup>12</sup> This will be particularly relevant as Australia transitions away from operational cooperation in Afghanistan towards the preservation of interoperability, including through the auspices of the North Atlantic Treaty Organization (NATO).<sup>13</sup>

## Reasons for Australia to take the proposed treaty action

2.9 The NIA states that binding treaty action should be taken because the proposed Treaty:

- provides a single overarching legally-binding agreement;<sup>14</sup>
- provides strategic direction for the Parties' relationship into the future;
- re-energises the bilateral cooperation between the Parties on military capabilities and military equipment development;<sup>15</sup>
- enables interaction on materiel projects of common interest, particularly where military requirements between the Parties align;

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(<<http://www.austlii.edu.au/au/other/dfat/treaties/2009/24.html>>); *Agreement between the Government of Australia and the Government of the French Republic Regarding Defence Cooperation and Status of Forces* (Paris, 14 December 2006)

(<<http://www.austlii.edu.au/au/other/dfat/treaties/2009/18.html>>), accessed 26 May 2014/

10 Joint Standing Committee on Treaties, *Report 86*, August 2007 and *Report 95*, October 2008, Canberra.

11 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 4.

12 NIA, para 4.

13 NIA, para 6; Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 1.

14 NIA, para 5.

15 NIA, para 6.

- provides opportunities for collaborative procurement in the future; and
- represents a commitment to the Parties' bilateral defence relationship.<sup>16</sup>

2.10 The NIA concludes that the Treaty does not raise any domestic or international defence policy concerns.<sup>17</sup> The Department stated that a number of countries in the Asian-Pacific region were notified of the impending agreement:

In particular, Malaysia, Singapore and New Zealand were assured that the treaty reinforces both Australia's and the United Kingdom's commitment to the Five Power Defence Arrangements. No concerns from any of those countries were raised.<sup>18</sup>

## Obligations

2.11 **Article 1** outlines the scope and purpose of the proposed Treaty, which is to promote:

- a. the mutual prioritisation of defence cooperation;
- b. information exchange on defence and security issues;
- c. closer engagement on technology, equipment and support matters;
- d. value for money in defence and security areas; and
- e. consultation on threats to international peace and security.<sup>19</sup>

2.12 **Article 2** outlines the areas of proposed cooperation. These include:

- a. sustaining the capacity to operate as partners in future coalition or bilateral operations;
- b. participating in multilateral security mechanisms, including the Five Power Defence Arrangements;
- c. exchanging information relating to defence capabilities and operations;
- d. exchanging strategic documents and views on key strategic issues;
- e. continuing to cooperate on space and cyber security issues;
- f. continuing to cooperate on the provision of quality assurance;
- g. continuing to cooperate on codification data and services;
- h. promoting military and civilian personnel exchanges;

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16 NIA, para 8.

17 NIA, para 8.

18 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 1.

19 NIA, para 9.

- i. commitment to the reciprocal personnel exchange program known as LONG LOOK;
- j. exchanging personnel, material and information to support defence and procurement reform;
- k. continuing defence industrial and materiel cooperation;
- l. cooperation and collaboration in defence science and technology;
- m. promoting the sale or loan of material, equipment and services between the Parties;
- n. continuing and developing cooperation in logistics; and
- o. cooperation in other emerging defence or security fields of mutual interest.<sup>20</sup>

2.13 **Article 3** provides for the Parties to enter into written arrangements to implement cooperation under the Treaty. It also provides that the Parties may terminate existing applicable arrangements by mutual, written consent, where such arrangements are obsolete or no longer support the aims and objectives of the Treaty. The Department confirmed that the Treaty does not directly affect existing implementation arrangements (i.e. non-legally binding agreements/arrangements) which govern activities between the Parties.<sup>21</sup> Therefore, in practice, once a 'non-binding arrangement' is terminated the particular activity covered ceases until a new agreement is reached.

2.14 **Article 4** outlines procedures for managing cooperation under the proposed Treaty. It notes that progress will be considered and guidance provided through AUKMIN Consultations. Departmental contacts and their responsibilities for overseeing the activities occurring under the proposed Treaty are also provided under Article 4. These responsibilities include the identification of long-term aims under the proposed Treaty and the settlement of disputes relating to the implementation of cooperation.

2.15 **Article 5** provides arrangements for access to facilities, equipment or support. It notes that the Parties shall inform each other of available facilities, equipment and support functions and provide the other Party with access to these where possible.

2.16 **Article 6** seeks to facilitate the transfer of defence equipment and services between the Parties, and to prevent any move to hinder legitimate access to their markets and government contracts in the field of defence. The

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20 NIA, para 10.

21 Mr Carey, Department of Defence, *Committee Hansard*, Canberra, 16 June 2014, p. 2.

Department assured the Committee that this Article does not affect the Australian Government's ability to act in Australia's best interest when tendering for defence goods or services.<sup>22</sup>

- 2.17 **Article 7** provides that the proportion of costs to be borne by each Party as a result of cooperation under the proposed Treaty will be detailed in separate (non-treaty) arrangements.
- 2.18 **Article 8** sets out procedures for the protection of information exchanged or communicated between the Parties. It requires that classified information is protected in accordance with the terms of the *General Security Arrangements between the United Kingdom and Australia concerning the Reciprocal Protection of Classified Information of Defence Interest*, or any applicable successor arrangement or agreement. Article 8 also notes that nothing in the Treaty authorises or governs the release, use, exchange or disclosure of information in which intellectual property rights exist.
- 2.19 **Article 9** contains provisions on claims and liability relating to cooperative activities occurring under the proposed Treaty. Australia and the UK agree to waive all claims against each other for acts arising in the performance of official duties in connection with the proposed Treaty. Article 9 provides how Australia and the UK will handle and settle third party claims arising from the acts or omissions of either Party in connection with the proposed Treaty. Claims arising under contract will be resolved in accordance with the terms of the contract.
- 2.20 **Article 10** ensures that the proposed Treaty shall not affect the rights and obligations or commitments of the Parties under other defence and security agreements or arrangements.
- 2.21 **Article 11** contains the procedures for managing disputes. Any dispute arising in relation to the interpretation or application of the proposed Treaty shall be resolved by consultation and negotiation between the Parties. If this approach fails, the Parties may agree to refer the dispute to a dispute settlement mechanism, as agreed between the Parties.

## Implementation

- 2.22 The NIA states that no changes to national laws or regulations are required to implement the Treaty.<sup>23</sup> The Treaty will not change the existing roles of the Australian Government or the state and territory governments.

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22 Mr Hamilton, Department of Defence, *Committee Hansard*, Canberra, June 16 2014, p. 2.

23 NIA, para 20.

## Costs

2.23 According to the NIA, the Treaty does not contain any specific financial commitments.<sup>24</sup> **Article 7** states:

The proportion of costs to be borne by each Party as a result of the cooperative activities pursued under this Agreement shall be detailed in arrangements which have been entered into pursuant to Article 3, paragraph 1 of this Agreement.<sup>25</sup>

## Conclusion

2.24 This Treaty is an endorsement of the Parties' successful and committed cooperation in the areas of defence and security. The proposed Treaty does not change current implementation arrangements, rather it creates a legal framework which binds existing arrangements and facilitates mutually beneficial decision making between the Parties about their future defence and security needs.

2.25 The Treaty will strengthen the Parties' bilateral relationship as Australia transitions away from operational cooperation in Afghanistan towards the preservation of interoperability.

2.26 The Committee supports Australia's ratification of the Treaty and recommends that binding treaty action be taken.

### Recommendation 1

**The Committee supports the *Treaty between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation* and recommends that binding treaty action be taken.**

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24 NIA, para 21.

25 *Treaty between the Government of Australia and the Government of the Kingdom of Great Britain and Northern Ireland for Defence and Security Cooperation*, done at Perth, 18 January 2013 [2013] ATNIF 3, Article 7.

