

National Interest Analysis [2017] ATNIA 2

with attachment on consultation

**Regional Co-operative Agreement for Research, Development and
Training Related to Nuclear Science and Technology**

(Ulaanbaatar, 18 May 2016)

[2017] ATNIF 2

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology

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Nature and timing of proposed treaty action

1. It is proposed that Australia accept the *Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology, 2017* (“2017 RCA”) in accordance with Article XII. The *Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology* (“1987 RCA”, [1988] ATS 11), entered into force on 12 June 1987 and has been extended for five year periods from 12 June 1992 ([1992] ATS 8), 12 June 1997 ([1997] ATS 31), 12 June 2002 ([2003] ATS 26), 12 June 2007 ([2009] ATS 10) and 12 June 2012 ([2012] ATS 37) (“extension agreements”). Australia is a party to the 1987 RCA and all five extension agreements. The 1987 RCA, as extended, is due to expire on 11 June 2017. The 2017 RCA will replace the 1987 RCA and its extension agreements.

2. In accordance with Article XIII, the 2017 RCA will enter into force generally either on 11 June 2017, should notification of acceptance be received by the Director General of the International Atomic Energy Agency (IAEA) by at least two Government Parties (“Parties”) by that date, or thereafter upon receipt of a second notification of acceptance by the IAEA. The 2017 RCA will enter into force for Australia on the date of receipt by the Director General of the IAEA of Australia's instrument of acceptance, subject to the 2017 RCA being in force generally.

3. It is proposed that Australia lodge its instrument of acceptance lodged as soon as practicable following consideration by the Joint Standing Committee on Treaties, and subject to Executive Council approval.

Overview and national interest summary

4. A regional cooperative agreement is an agreement by IAEA members of a particular region to cooperate in matters of research, development and training related to nuclear science and technology. The 1987 RCA has been continually extended due to its usefulness in providing a regional framework for initiating cooperative research, development and training projects between IAEA Member States in the Asia-Pacific region. The 2017 RCA has the same intent and purpose of the 1987 RCA and subsequent extension agreements. However, unlike the previous agreements, the 2017 RCA is of unlimited duration.

5. The 2017 RCA will have important benefits for Australia from a security, economic and political perspective. The 2017 RCA is an important mechanism in fulfilling the technical cooperation provisions of the *Treaty on the Non-Proliferation of Nuclear Weapons* [1973] ATS 3 (“the NPT”). Our participation helps contribute to a non-proliferation regime which

has kept our immediate region free of nuclear weapons proliferation for over 40 years. The 2017 RCA also allows Australia to participate in international collaborative projects and to maintain and extend a national capacity in cutting-edge nuclear technologies. Finally, the 2017 RCA facilitates Australian technical and political cooperation with 21 regional countries, which contributes to maintaining and improving bilateral relationships in the Asia-Pacific region.

Reasons for Australia to take the proposed treaty action

6. The 2017 RCA has the same intent and purpose of the 1987 RCA and its subsequent five extension agreements. The 1987 RCA is based on an agreement of the same name concluded in 1972 [1977] ATS 27 (“1972 RCA”) and subsequently extended in 1977 ([1977] ATS 27) and again in 1982 ([1982] ATS 17). Australia became a Party to the 1972 RCA in 1977 (after having been an observer for five years) and became a Party to the 1987 RCA upon its entry into force in that year. The 1987 RCA was extended in 1992, 1997, 2002, 2007 and 2012. Australia is a party to all five extension agreements.

7. Australia is a designated member of the IAEA Board of Governors, the only such Board member without a civil nuclear power program. RCA projects are implemented under the auspices of the Technical Cooperation Programme administered by the IAEA. Cooperation through the RCA is an important means for Australia to share its recognised leading expertise on civil nuclear research and technology. The other Parties to the 1987 RCA are: Bangladesh, Cambodia, China, Fiji, India, Laos, Indonesia, Japan, Republic of Korea, Malaysia, Mongolia, Myanmar, Nepal, New Zealand, Pakistan, Palau, Philippines, Singapore, Sri Lanka, Thailand and Vietnam. The Australian Nuclear Science and Technology Organisation (ANSTO) is the designated point of contact for Australia's participation in the RCA.

8. Australia has important national interests in maintaining its participation in the RCA. IAEA-sponsored regional cooperation agreements such as the 2017 RCA provide an important means of fulfilling the technical cooperation provisions of the NPT. The NPT is the centrepiece of the non-proliferation regime which, for more than 40 years, has helped to keep Australia's immediate neighbourhood free of nuclear weapons proliferation. Under the NPT, non-nuclear-weapon States Parties have foresworn nuclear weapons and must accept IAEA safeguards for the purpose of verifying their fulfilment of NPT obligations. All NPT Parties have the right to “develop research, production and use of nuclear energy for peaceful purposes” and undertake to “...facilitate... the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy” (NPT Article IV). The 2017 RCA provides a framework for Parties to cooperate with each other in respect of research, development and training projects in nuclear science and technology. Therefore, continued membership of the RCA is one way for Australia to fulfil its undertaking to cooperate with other Parties in the peaceful uses of nuclear energy under the NPT.

9. The 2017 RCA also helps Australia maintain and extend its national capacity in leading-edge nuclear technologies. Examples include medical, industrial, environmental and agricultural technologies. Acceptance of the 2017 RCA will allow Australia to continue to engage in valuable international collaborative projects that apply nuclear techniques to food and agriculture, human health, industry, environmental monitoring and water resource management.

10. Over the past 45 years, the successive RCAs have evolved to become an important vehicle for Australia's cooperation with regional countries in nuclear science and technology. They have enabled Australia to participate in mutually beneficial research and training related to nuclear science and technology with 21 countries in the Asia-Pacific region. Such cooperation has had a positive flow-on effect on our bilateral and multilateral relationships in the region, with significant political benefits for Australia.

11. Non-acceptance of the 2017 RCA would impede Australia's ability to remain constructively engaged in regional nuclear activities and would limit our ability to forge links with regional experts at a time when a significant expansion in nuclear power production is underway or under consideration by a number of countries in our region. It would diminish Australia's standing in international nuclear arms control fora and our ability to influence international nuclear policy developments in accordance with our national economic and security interests.

Obligations

12. Australia's obligations under the 2017 RCA are largely unchanged from those under the 1987 RCA. However, given the long history of constructive cooperation under the RCA and the involved and lengthy process in undergoing treaty ratification every five years, the Parties agreed that the 2017 RCA will be of unlimited duration (Article XIII(2)), with Parties being able to opt out at any time (Article XV). The membership process under the 2017 RCA differs from its predecessor agreements. Countries not party to the 1987 RCA or any of its extension agreements may become party to the 2017 RCA only with the agreement of all parties to the 2017 RCA (Article XII). In addition, the 2017 RCA differs from the 1987 RCA in a number of minor administrative respects, so as to reflect the current practices in the RCA.

13. The 2017 RCA, like the 1987 RCA, places a number of obligations on the Parties, which are to be implemented within the framework of their national laws. In particular, the 2017 RCA requires that the Parties:

- promote and coordinate cooperative research, development and training projects in nuclear science and technology through their appropriate national institutions (Article I);
- attend meetings to consider, approve and review cooperative projects and conduct other business relating to the 2017 RCA (Article II(2)), including approving new Parties to the 2017 RCA (Article XII(2));
- make available the necessary scientific and technical facilities and personnel for the implementation of cooperative projects in which the Party is participating (Article V(1)(a));
- take reasonable and appropriate steps for the acceptance of scientists, engineers or technical experts designated by other participating governments or by the IAEA to work at designated installations for the purpose of implementing cooperative projects in which the Party is participating (Article V(1)(b));
- submit to the IAEA an annual report on the implementation of the portion of cooperative projects assigned to it (Article V(2));
- contribute, financially or otherwise, to the implementation of cooperative projects and notify the IAEA annually of any such contributions (Article V(3));

- ensure that the IAEA's safety standards and security guidance documents are applied to cooperative projects as appropriate (Article IX(1));
- ensure that any assistance provided to the Party under the 2017 RCA is used only for peaceful purposes, in accordance with the statute of the IAEA (Article IX(2)); and
- settle any disputes with respect to the interpretation or application of the 2017 RCA through consultation, negotiation or other peaceful means (Article XI).

14. Apart from differences noted above (unlimited duration and minor administrative differences), Australia's obligations under the 2017 RCA would remain those accepted in the 1987 RCA.

Implementation

15. No legislation is required to give effect to the 2017 RCA. Activities proposed to be undertaken by Australia under the 2017 RCA and those undertaken under the previous agreements fall within the existing functions of the Australian Nuclear Science and Technology Organisation under Section 5 of the *Australian Nuclear Science and Technology Organisation Act 1987*.

16. No changes to the existing roles of the Commonwealth or the States and Territories will arise as a consequence of implementing the 2017 RCA.

17. In accordance with Article V(2), Australia is obliged to continue to submit to the IAEA annual reports on the implementation of the portion of cooperative projects assigned to it under the 2017 RCA.

Costs

18. Pursuant to Articles V(3) and VIII(1) of the 2017 RCA, Australia has the option of contributing financially and “in-kind” to facilitate the effective implementation of cooperative projects. Financial contributions to project costs will be assessed on a case-by-case basis and provided for through normal budgetary processes.

19. Australia's contributions “in-kind” are given through: the placement of RCA and IAEA fellowship and scientific visitor awardees for study and training in Australia; the provision of courses and experts to provide assistance to the IAEA or to individual RCA Government Parties on behalf of the IAEA; and the hosting of RCA meetings sponsored by the IAEA. These costs are met by relevant agencies from their existing resources.

Future treaty action

20. Article XIV provides a mechanism for amendment to the 2017 RCA. Amendments shall be considered at the Meeting of Representatives, and their adoption requires consensus by all Parties.

21. The 2017 RCA does not explicitly provide for the negotiation of future related legally-binding instruments such as protocols or annexes. The 2017 RCA also does not provide for reservations or declarations.

22. The 2017 RCA, unlike the 1987 RCA and subsequent extension agreements, is of unlimited duration, with Parties being able to opt out at any time through denunciation. Unless a decision is taken by Australia to denounce the 2017 RCA at a future date, there should be no need for any future treaty actions in this regard.

Withdrawal or denunciation

23. In accordance with Article XV, any Party may denounce the 2017 RCA by written notification to the IAEA. Denunciation takes effect one year following the date of the receipt of the written notification or on such later date as specified by the denouncing Party. The one year period is consistent with the nature of the cooperative projects to be undertaken under the 2017 RCA, which will see events (meetings, training courses) being scheduled up to a year ahead of time in various countries in the region. Denunciation by Australia would be subject to our domestic treaty making requirements, including tabling and consideration by the Joint Standing Committee on Treaties.

Contact details

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ATTACHMENT ON CONSULTATION

Regional Co-operative Agreement for Research, Development and Training Related to Nuclear Science and Technology

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CONSULTATION

24. Information on the 2017 RCA has been provided to the States and Territories through the schedule of treaty actions under negotiation, consideration and review provided biannually to the Commonwealth-State-Territory Standing Committee on Treaties. Australia's acceptance of the RCA would have no effect on the States and Territories.