

Treaty between Australia and the State of the United Arab Emirates on Defence Cooperation

Introduction

- 4.1 The Agreement between the Government of Australia and the Government of the United Arab Emirates Concerning Defence Cooperation is designed to enhance bilateral defence engagement by facilitating cooperation in a range of mutually agreed fields including, but not limited to, military training and education, joint military exercises, defence materiel and equipment, security and defence policy and protection from weapons of mass destruction.¹

Background

- 4.2 Australia has a modest defence relationship with the United Arab Emirates which includes Special Forces cooperation, senior-level visits and training courses. Australia's interest in cooperation with the United Arab Emirates stems from Australian involvement in the Middle East and the developing potential for defence materiel cooperation.²

1 NIA, para 3.

2 NIA, para 4.

Obligations

- 4.3 The purpose of the Agreement, as outlined in Article 1, provides that each Party will encourage, facilitate and develop cooperation in the field of defence on a mutually beneficial basis.³

Joint Defence Cooperation Committee (JDCC)

- 4.4 Article 2 requires both Australia and the United Arab Emirates to create a JDCC that will establish mechanisms to implement the Agreement. Australia will be obliged to select one person to be head of its representatives to the JDCC.⁴

Security Procedures

- 4.5 Article 5 provides that each Party must protect and safeguard all information and material provided by the other Party under the Agreement in accordance with its security marking.⁵

Costs

- 4.6 Article 6 provides that upon the implementation of this Agreement, or any other activities arising thereof, unless otherwise mutually determined in the relevant Memorandum of Understanding or Protocol, each Party shall bear its own costs.⁶

Laws, Rules and Regulations

- 4.7 Pursuant to Article 7 of the treaty, personnel of one Party while in the territory of the host Party, will be subject to and shall observe the laws, rules and regulations of the host Party. As such, Australian personnel sent to United Arab Emirates under the proposed Agreement must observe the laws, rules and regulations of that country. However, if personnel violate military laws and regulations of their country while in host Party territory, they will be subject to the military laws and rules of their country.⁷

Disputes

- 4.8 Article 8 provides that the Parties will not refer any disputes concerning the Agreement to any third party, national or international

3 NIA, para 9.

4 NIA, para 10.

5 NIA, para 11.

6 NIA, para 12.

7 NIA, para 13.

tribunal for settlement. Any disputes that do arise shall be resolved through mutual consultations and direct negotiations between the two nations.⁸

Future treaty action

- 4.9 Under Article 10, either Party may propose amendments to the Agreement. Any amendments would be subject to Australia's treaty processes. Any revisions or amendments will enter into force once both Parties have exchanged written notification that all procedures for entry into force have been completed in accordance with their domestic laws.⁹
- 4.10 At present, the Australian Defence Department is not considering future Protocols. Future Memoranda of Understanding could cover areas such as counter-terrorism, education and training or information exchange.¹⁰

Reasons for Australia to take treaty action

- 4.11 The NIA states that this Agreement is significant to Australia as it will aid defence cooperation with the United Arab Emirates in a range of areas, including the special interest areas of defence materiel and counter-proliferation.¹¹ According to the Defence Department, the Agreement will also be of benefit to Australia by strengthening our overall bilateral defence relationship with the United Arab Emirates, which it considers to be a country located in an important strategic position, alongside sea lanes of significant importance to Australia.¹²
- 4.12 The establishment of a Joint Defence Cooperation Committee (JDCC) through this Agreement will both encourage and facilitate the

8 NIA, para 14.

9 NIA, para 18.

10 NIA, para 20.

11 NIA, para 5.

12 Mr Andrew Chandler, *Transcript of Evidence*, 25 August 2008, p. 29.

cooperation envisaged in the Agreement and serve to strengthen the bilateral relationship between the two nations.¹³

- 4.13 The Agreement also provides a legal framework for visiting personnel when Australia and the United Arab Emirates mutually arrange to send personnel to the other country.¹⁴
- 4.14 The Department of Defence suggests that the significant time, goodwill and effort invested in the finalisation of this Agreement by both Australia and the United Arab Emirates, as well as the high priority the United Arab Emirates has put on the Agreement, means that failure to ratify it would cause significant disappointment and could raise doubts about Australia's commitment to the bilateral defence relationship.¹⁵

Costs

- 4.15 Article 6 of the Agreement states that each Party shall bear its own costs with relation to implementation of the Agreement and any other activities involved, unless mutually agreed in the relevant Memorandum of Understanding or Protocol. Implementation costs to Australia are anticipated to be minimal, and will be borne by the Department of Defence, from existing resources.¹⁶

Withdrawal or denunciation

- 4.16 Under Article 9 of the Agreement, either Party may unilaterally terminate the Agreement by providing written notice to the other Party. Termination would become effective six months after written notice has been given.¹⁷
- 4.17 Termination by Australia would be subject to Australia's treaty processes, including tabling and consideration by the Committee.¹⁸

13 NIA, para 6.

14 NIA para 7.

15 NIA, para 8.

16 NIA, para 16.

17 NIA, para 21.

18 NIA, para 21.

- 4.18 Should the Agreement be terminated, Article 9 further provides that each Party shall be obliged to continue to fulfil all the obligations arising. Article 5 covers the continued protection of any shared information.¹⁹

Other matters

Capital and corporal punishment

- 4.19 The Committee received a submission from Dr Ben Saul of the Sydney Centre for International Law outlining concern that, under Article 7 of the Agreement, which states that personnel will be subject to the laws and regulations of the host Party, it is possible that Australian personnel will be subject to the death penalty or judicial flogging under United Arab Emirates law. This could be seen as incompatible with human rights law. Dr Saul suggests that the Agreement could be strengthened by:

... specifying (in Article 7 of this treaty) that the personnel of the sending Party shall not only observe the national laws in force in the host country, but also public international law (and in particular, those branches which directly concern the individual, including international humanitarian law, international human rights law and international criminal law).²⁰

- 4.20 In response to this, the Department of Defence suggested that the Agreement as it stands is a 'framework sort of Agreement', and that more specific arrangements would be made in relation to general personnel at the point at which personnel were to be exchanged.²¹

Conclusion and recommendations

- 4.21 The Committee notes the concern put forward by Dr Saul in his submission that there is a possibility that Australian personnel could
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19 NIA, para 21

20 Dr Ben Saul, Submission no. 1, p. 1

21 Mr Stephen Bouwhuis, *Transcript of Evidence*, 25 August 2008, p. 31

be subject to capital or corporal punishment for offences committed off duty when hosted by the United Arab Emirates as a result of this Agreement. The Committee also notes that the Department of Defence has indicated that more detailed stipulations would be made with regard to punishment in the event of exchanging personnel. The Committee considers that as part of these detailed arrangements every effort should be made by the Australian Government to ensure that Australian personnel are protected from the death penalty.

- 4.22 The Committee recognises the value of the Agreement with respect to encouraging and strengthening our overall bilateral defence relationship with the United Arab Emirates and therefore considers that this agreement will be in Australia's national interest.

Recommendation 6

The Committee recommends that in any specific arrangement concerning the exchange of Defence personnel, the Australian Government seeks to ensure that Australian personnel are protected from corporal and capital punishment under United Arab Emirates law.

Recommendation 7

The Committee supports the *Agreement between the Government of the United Arab Emirates and the Government of Australia on Defence Cooperation* and recommends that binding treaty action be taken.